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ABSTRACT

The purpose of this report is to review the actions of the United States Office of Education (OE) in the administration and operation of Title I of the Elementary and Secondary Education Act, as amended by the 1978 Education Amendments. The report describes the charges Congress mandated OE to implement and examines OE's response to these specific directives. The report is composed of an introduction and four sections. The introduction overviews the reasons for undertaking the report and the study methodology. The sections describe (1) the background on Federal administration of Title I, including a description of the program, OE's role in the administration, and issues underlying the legislative consideration of changes in that role in 1978: (2) the new structure and requirements for Federal administration of Title I, as enacted in the 1978 Education Amendments: (3) OE efforts to address mandated legislative requirements, and (4) the thirteen findings of the study and recommendations based upon these findings. (Author/MK)

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May 1980

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The Office of Education Administers Changes in a Law:

Agency Response to Title I, ESEA Amendments of 1978

The National Advisory Council
on the Education of Disadvantaged Children
U. S. Education Department

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
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Prepared By:
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NTS Research Corporation

NATIONAL ADVISORY COUNCIL

SEC. 196. (a) COUNCIL ESTABLISHED.—There shall be a National Advisory Council on the Education of Disadvantaged Children (hereinafter in this section referred to as the "National Council") consisting of fifteen members appointed by the President, without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, for terms of three years, except that (1) in the case of initial members, five shall be appointed for terms of one year each and five shall be appointed for terms of two years each, and (2) appointments to fill vacancies shall be only for such terms as remain unexpired. The National Council shall meet at the call of the Chairman.

(b) FUNCTIONS.—The National Council shall review and evaluate the administration and operation of this title, including its effectiveness in improving the educational attainment of educationally deprived children, including the effectiveness of programs to meet their occupational and career needs, and make recommendations for the improvement of this title and its administration and operations. These recommendations shall take into consideration experience gained under this and other Federal educational programs for disadvantaged children and, to the extent appropriate, experience gained under other public and private educational programs for disadvantaged children.

(c) REPORTS.—The National Council shall make such reports of its activities, findings, and recommendations (including recommendations for changes in the provisions of this title) as it may deem appropriate and shall make an annual report to the President and the Congress not later than March 31 of each calendar year. Such annual report shall include a report specifically on which of the various compensatory education programs funded in whole or in part under the provisions of this title, and of other public and private educational programs for educationally deprived children, hold the highest promise for raising the educational attainment of these educationally deprived children. The President is requested to transmit to the Congress such comments and recommendations as he may have with respect to such report. Subject to section 448(b) of the General Educational Provisions Act, the National Council shall continue to exist until October 1, 1984.

(20 U.S.C 2852.)

May 1980

The Office of Education Administers Changes in a Law:

Agency Response to Title I, ESEA Amendments of 1978

The National Advisory Council
on the Education of Disadvantaged Children
U. S. Education Department

Prepared By:
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May 15, 1980

The President
The White House
Washington, DC

Dear Mr. President:

The National Advisory Council on the Education of Disadvantaged Children is pleased to submit this Special Report, The Office of Education Administers Changes in a Law: Agency Response to Title I, ESEA Amendments of 1978. This report is issued by the Council under mandate of P. L. 89-10, as amended by P. L. 95-561, which states that the Council "shall review and evaluate the administration of" Title I, "including its effectiveness in improving the educational attainment of educationally deprived children...and make recommendations for the improvement of this title and its administration and operation."

The establishment of the Department of Education presented the Council with a particularly appropiate occasion to review and evaluate the Federal Administration of Title I as amended by the Education Amendments of 1978. The Council believes the findings and recommendations contained in this report can serve as helpful guidelines to the Secretary of Education as she determines how Title I can most effectively be administered by the new Department.

The Council found thirteen specific areas where action is needed to assure the implementation of Congressional mandates for change in the Federal administration of the Title I program. The Council offers thirteen recommendations based on these findings. It is our sincere belief that improved and effective administration of Title I will enable the Federal Government to better achieve its long standing goal of increasing the educational achievement levels of disadvantaged children in our nation's elementary and secondary schools.

Respectfully submitted,

M. Hayes Mizell

M. Hayes Mizell
Chairman

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ABBREVIATIONS USED IN THIS REPORT

CFR	--	Code of Federal Regulations
EDGAR	--	Education Division General Administrative Regulations
ESEA	--	Elementary and Secondary Education Act
FY	--	fiscal year
HEW	--	Department of Health, Education and Welfare
LEA	--	local educational agency
MEP	--	Monitoring and Enforcement Plan
NCES	--	National Center for Education Statistics
NIE	--	National Institute of Education
NPRM	--	Notice of Proposed Rulemaking
OE	--	U.S. Office of Education
PAC	--	Parent Advisory Council
SEA	--	State educational agency

EXECUTIVE SUMMARY

The National Advisory Council on the Education of Disadvantaged Children is charged by the Congress to oversee the implementation of Title I of the Elementary and Secondary Education Act (ESEA). This report was commissioned by the Council and is being issued under its statutory mandate to review and evaluate the administration and operations of this program.

The Education Amendments of 1978 (Public Law 95-561) made important changes in Federal administrative procedures for Title I, the nation's largest Federal program of financial aid to elementary and secondary education. Title I is the premier Federal initiative to increase the achievement levels of poor children with the most serious educational needs. This year approximately six million children in 14,000 school districts are receiving educational benefits financed by more than $3 billion in Federal funds requested by President Carter and appropriated by Congress. In spite of the emergence in recent years of other Federal aid programs to meet children's special educational needs, Title I is the prime expression of Congressional intent that the education of children from low-income families must be the Federal Government's major educational priority.

The purpose of this report is to review the actions of the U.S. Office of Education (OE) in the administration and operation of Title I, as amended by the 1978 Education Amendments. The report describes the changes which Congress mandated OE to implement in administration of Title I and examines OE's response to these specific Congressional directives.

Analysis of the 1978 law reveals a new Congressional view of OE's role in administering Title I. The new role can be characterized as that of a strong overseer of a complex and interrelated system designed to increase administrative accountability at all levels in order to improve educational services available to disadvantaged children. Because the Title I undertaking is so massive in terms of dollars, of participating students, and of administrative and instructional personnel, the Federal administrative role is intended to be aggressive and forthright. According to the view embodied in the 1978 law, the Federal office has responsibility to set a clear and explicit framework for State and local action. This framework should permit local educational agencies (LEAs) to know exactly what is authorized under Title I and what is not, thus allowing the greatest possible latitude for local action. Only by knowing precisely what is required can State and local administrators have the confidence to design programs that meet local needs effectively while complying with Title I requirements.

To carry out this new role, Congress directed OE to implement a series of specific administrative procedures which would result in the creation of an interlocking, interdependent system of program improvement and oversight by administrators at Federal, State, and local levels as well as by parents and the public. Congress also directed OE to take steps to make specific changes in the legal framework for Title I and to make the administrative framework for Title I clear and as comprehensive as possible.

The study's major findings regarding OE's effectiveness in establishing this system are presented below:

1. The Title I program office has not had adequate access to senior decision-makers to permit careful consideration of program policies. Due to the number of organizational layers separating Title I from the Secretary, senior decision-makers have not been sufficiently informed about Title I issues and policies.

2. The Title I program office within OE has had insufficient administrative resources to carry out its statutory responsibilities. The poor bargaining position of the Title I program office in annual OE negotiations for salary and expenses funding and the perceptions by some OE managers that Title I is primarily a check-writing program has resulted in inadequate administrative resources, especially in comparison with other State formula grant programs.

3. The Title I program office has not had sufficient access to the offices in OE and HEW that regularly communicate with the Congress. This organizational distance has reduced opportunities for the program office to exchange information and ideas with the appropriate Congressional committees.

4. The Notice of Proposed Rulemaking published in June 1979 was an inadequate response to the 1978 Congressional directive to make the Title I adminisframework more clear and comprehensive. Revised draft regulations circulated in January 1980 correct some of the early deficiencies; however, at this writing, final usable regulations are still not complete. Consequently, applicants and grantees do not know precisely what types of legal requirements are required of them.

5. OE will publish the Title I policy manual mandated by the 1978 law, but development of the manual is behind schedule due to delays in the issuance of final regulations. This tardiness represents a serious failure to respond to the Congressional mandate that Title I legal guidance as well as instructional and administrative alternatives be put in the hands of Title I personnel at an early date. In addition, since OE has not developed model application forms and monitoring instruments for use by State educational agencies (SEAs) and LEAs, as required by law, the policy manual will be initially deficient in that respect.

6. OE's rules and procedures for review of State applications and monitoring and enforcement plans (MEPs) do not ensure that States will adequately carry out their duties with regard to review of LEA applications and monitoring of LEA projects. By not providing more specific guidance to SEAs and by not requiring SEA responses that are more specific in content, OE cannot confidently determine whether SEAs know what actions are required of them and whether they intend to comply with the pertinent requirements.

7. OE has made improvements in its own procedures for monitoring the States, but it has not determined monitoring priorities nor identified which aspects of State Title I administration should be examined most closely in visits to the States. OE has not established priorities that determine (1) which States to monitor most closely (States with large programs or States with records of poor Title I administration, for example) and (2) what program components to review most carefully within each State (for example, those requirements for which a given State indicates a record of problems or those particularly complex and difficult requirements such as non-supplanting or maintenance of effort).

8. OE has substantially improved its efforts to resolve disputed audit findings, but it has not yet made changes in its audit procedures required by the 1978 law. At this writing OE has not accomplished the following required steps: (1) development and publication of Federal audit resolution procedures; (2) development of common audit standards agreed upon by OE, the Office of the General Counsel, and the Office of the Inspector General; (3) development of standards for adequate documentation of audit findings; (4) development of methods for following up on audits to make certain that corrective actions have been taken; and (5) appointment of a full complement of members to the Education Appeal Board to permit the expeditious resolution of State and local appeals of Federal audit findings.

9. OE's new definition of a Title I complaint contained in the draft regulations may limit the filing of complaints by parents of students eligible for Title I services. The technical definition of a complaint, as proposed by OE in draft regulations, may make it very difficult for an individual to prepare a written complaint, especially if he or she is not familiar with legal terminology.

10. OE's performance on enforcement-related matters cannot be assessed because the agency has not yet used its new enforcement authority, nor has it issued regulations covering several enforcement-related matters described in the law. OE has not used its new authority (1) to institute partial withholding of Title I funds from SEAs not in full compliance with Title I and (2) to enter into a "compliance agreement" with an SEA which has developed an acceptable plan for eliminating specified illegal practices. Contrary to Congressional request, OE has not issued regulations (1) which define "substantial compliance" as used in determining whether to commence the withholding of Title I funds and (2) which describe enforcement alternatives available to SEAs.

11. OE has not implemented Congressional directives to (1) enlarge State and local roles in designing and conducting evaluations at State and local levels and (2) conform the scheduling of Title I studies to the legislative calendar. OE has not yet carried out the Congressional request to review the appropriateness of the evaluation models for providing program information useful for State and local planning needs. Although OE has prepared a plan for scheduling national Title I studies in accordance with legislative time constraints, that plan has not been shared with appropriate Congressional committees or with the public to determine if it meets anticipated needs.

12. OE has not submitted to Congress the Title I evaluation and enforcement reports due February 1, 1980. Work on the enforcement report was not initiated until questions about it were raised in connection with the preparation of this report on Title I Federal administration.

13. NIE and OE have not yet adequately responded to the Congressional mandate for a study of Title I parent involvement. Although OE is conducting a study addressing many of the concerns expressed in the statute, it is not clear that this study will yield the information needed by Congress.

Consistent with its Congressional mandate, the Council recommends the following actions to the Secretary of Education in order to improve the administration and operation of Title I. The Council believes that the Secretary must assume a strong leadership role in assuring the effective administration of the Title I program, giving special attention to the Department's prompt implementation of the legislative mandates for Title I in the Education Amendments of 1978.

1. The Director of Title I must report directly to the Assistant Secretary for Elementary and Secondary Education.

2. The organization and staffing of the Department of Education must reflect the high priority which Congress attaches to the effective administration of Title I. Thus, sufficient personnel and Departmental funds must be provided to improve the capacity of the Title I program office to monitor compliance and administer program operations effectively. As a first step toward improving Title I's staffing patterns, the Secretary should undertake a systematic and careful analysis of Title I staffing.

3. The Secretary must establish more effective lines of communication between the Title I program office and both the Congress and the general public.

4. The Secretary must expedite publication of final regulations creating a legal framework for Title I which clearly and comprehensively reflects all pertinent legislative requirements.

5. The Department must publish a Title I policy manual within six months of publication of final Title I regulations, as required by statute.

6. The Department must develop (and publish in the regulations) clear and comprehensive guidance to SEAs regarding (1) the content of SEA applications and monitoring and enforcement plans and (2) required procedures for SEA review of LEA applications and implementation of monitoring and enforcement plans.

7. The Department must establish priorities which guide Federal on-site monitoring of State Title I administration.

8. The Department must implement changes in audit procedures required by the 1978 law.

9. Final Title I regulations must include a clear and easily interpreted definition of a Title I complaint.

10. The Department must use its new enforcement authority and must issue regulations covering enforcement-related matters contained in the law.

11. In order to improve the quality of information available for State and local decision-making, the Secretary must develop procedures which ensure greater State and local roles in designing and implementing evaluations at national, State, and local levels. Additionally, evaluations of national Title I must be undertaken on a schedule which meets Congressional needs for information helpful to the legislative process.

12. At the earliest date possible, the Secretary must submit to Congress the Title I evaluation and enforcement reports due February 1, 1980.

13. The Secretary must take necessary actions to fulfill the Congressional mandate for a study of Title I parent involvement.

The report is composed of an introduction and four sections. The sections describe (1) the background on Federal administration of Title I, including a description of the program, OE's role in the administration of Title I, and issues underlying the legislative consideration of changes in that role in 1978; (2) the new structure and requirements for Federal administration of Title I, as enacted in the 1978 Education Amendments; (3) OE efforts to address mandated legislative requirements; and (4) findings of the study and recommendations.

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THE OFFICE OF EDUCATION ADMINISTERS CHANGES IN A LAW: AGENCY RESPONSE TO TITLE I, ESEA AMENDMENTS OF 1978

INTRODUCTION

This report is being issued by the National Advisory Council on the Education of Disadvantaged Children, the committee charged by Congress to act as the eyes and ears of the American public in overseeing the implementation of Title I of the Elementary and Secondary Education Act (ESEA). The Council's authority to review Federal activities in implementing Title I is contained in its general statutory mandate, as stated in Section 196(b) of Title I: "The National Council shall review and evaluate the administration and operation of this title...and make recommendations for the improvement of this title and its administration and operations." Within the past several months President Jimmy Carter has appointed fourteen new members and a new chairman to the Council. The new Council has determined that it will exercise an active, analytical role in the oversight of Title I. Consistent with its charge as the public's monitor of Title I administration and operations, the Council decided to undertake the review presented in this report.

Legislative and administrative actions prompting this review

In 1978 the U.S. Congress made significant changes in the nation's largest program of aid to elementary and secondary education, Title I of ESEA. These changes, along with legislative actions affecting other Federal education programs, were enacted in the Education Amendments of 1978 (Public Law 95-561). Congressional modifications of Title I left intact the program's historical purpose of providing supplementary educational services to disadvantaged children residing in low-income areas. Responsibility for administering the program was restructured and revised, however, to improve the delivery of services to eligible students. This report describes the changes which Congress made in Federal administrative responsibilities for Title I and the response of the U.S. Office of Education (OE) to Congressional directives for change. The report also examines the implications of OE's actions in light of the establishment of the new Department of Education.[1/] In that context the report proposes actions which the National Advisory Council on the Education of Disadvantaged Children believes must be taken by the Secretary of Education to improve the Federal administration of Title I and the implementation of other programs patterned after Title I, such as the youth initiative now being considered by Congress.

The Federal administration of Title I is important to the Congress and to the American public for two major reasons. First, as stated in Section 101 of the statute, Title I is the Federal Government's primary authority for recognizing and responding to "the special educational needs of children of low-income families" and "the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate programs." Second, at annual outlays exceeding $3 billion, Title I is the largest institutional grant program in the Federal education establishment and the second largest program in the new Department of Education. (The only larger program is the Basic Educational Opportunity Grants Program providing assistance to postsecondary students from low-income families.) The administration of Title I thus warrants continuing scrutiny to ensure that funds are being administered in a manner that is consistent with public intent, as reflected in the Title I statute.

Due to time and resource constraints, this report considers only matters related to Title I aid to school districts, or local educational agencies (LEAs).

Many of the issues raised by the report apply also, however, to the Title I programs of assistance to handicapped children, neglected and delinquent children, and children of migrant workers. Even though not fully reviewed in this report, the Federal administration of these other Title I assistance activities is important to the successful delivery of educational services under their respective Title I authorities and requires the close attention of the new Secretary of Education.

Reasons for conducting this review now

It is important for the Congress and the President to be informed about the Federal administration of Title I on a regular, ongoing basis. This report is particularly timely now for two reasons.

First, the review on which the report is based was conducted a year and a half after enactment of the Education Amendments of 1978. The reauthorization of Title I signed into law in November 1978 contained a blueprint for administrative changes in the program. Seen from one perspective, OE's job was laid out in a simple and direct way by the Title I statutory reauthorization and the Committee reports.[2] OE was expected to implement an administrative system which provided extensive opportunities for program oversight and improvement by administrators at Federal, State, and local levels and by parents and members of the public. The statute itself established the framework for Federal, State, and local responsibility. Explicitly noted at various places in the law and in the reports by Congressional committees were instructions for the Commissioner of Education to provide more flesh on the bare bones of the statute. This task was to be accomplished by regulations which would explicate or define requirements stated in a more general way in the statute itself. Analysis of the specific legislative requests for regulations and for other OE actions indicates that OE was not being directed by Congress to develop new policy with regard to the purposes or intent underlying the program. In fact, as described in Section II of this report, many provisions enacted in the 1978 statute were taken from existing Title I policy, as set out in program regulations and guidelines and in OE responses to State and local inquiries. In many instances (for which examples are provided later in the report), the statute merely codified material which had previously been less formally used by the Title I program office. Thus, for the most part OE was being directed to implement provisions which were not new or surprising but were an improved and more carefully integrated version of Title I's administrative practice prior to the 1978 Amendments. Given the nature of the changes involved, it is important to determine how comprehensively they have been implemented after a year and a half.

A second reason why this review is appropriate now is that key decisions are currently being made concerning the shape of the new Department of Education. Enacted in late November 1979, the Department is expected to be fully implemented by May 1980. In the course of establishing this new organizational structure for Federal education activities, important decisions will have to be made about how Title I will fit into the new Department. For example:

- Where in the organizational structure of the Department of Education will Title I be located?
- How many layers of Federal officials will separate the Title I program director from the Secretary of Education?
- Will the Department's organizational structure promote the coordination of the Title I program with other relevant Federal offices, e.g., offices sponsoring research on student acquisition of basic skills and offices with Federal oversight responsibilities such as the Office of the Inspector General and the Office for Civil Rights?
- How will Title I be coordinated organizationally and educationally with initiatives on youth employment?

The Secretary's decisions on these matters may indicate how much importance the new Department will assign to improvements in the administration of Title I. If Title I is seen as a narrow, funds-dispersal endeavor, its organizational placement will be less important than if the program's monitoring and enforcement responsibilities are understood as being educationally significant to Title I beneficiaries.

Closely related to these issues is the extent to which current patterns of relatively low allocations for Title I Federal administrative expenditures will be perpetuated in the new Department. As discussed in Section I of this report, Title I's historical share of OE's overall administrative allowance has been low when compared with the agency's other formula grant programs. The Secretary should take a close look at new ways of matching administrative resources to administrative requirements for Title I and other programs.

Study methodology

Data used in this report have been drawn from five types of sources:

- The Title I statute as reauthorized by the Education Amendments of 1978 (Public Law 95-561); the statute as reauthorized in 1974 (Public Law 93-380), which was the version of Title I in effect in 1978; and the reports on Title I issued in 1978 by the pertinent House, Senate, and conference committees of the U.S. Congress.

- Title I regulations (45 CFR Parts 116 and 116a), including the regulations in effect at the time of the 1978 reauthorization (published in the Federal Register on September 28, 1976); the proposed regulations printed in the Federal Register on June 29, 1979; and the revised regulations prepared by OE and circulated for informal review in January 1980.

- As noted in the list of references at the end of the report, analytical reports on Title I prepared and issued by OE, the National Institute of Education, and the Office of the Assistant Secretary for Education.

- As described in Appendix A, interviews with Title I program staff and other OE staff, Congressional committee staff, State Title I administrators, and representatives of public advocacy groups concerned with improvements in Title I administration.

- Internal OE memoranda and other documents pertaining to Title I administration, as supplied by interviewees.

Organization of report

The report is divided into four sections. The sections describe (1) the background on Federal administration of Title I, including a description of the program, OE's role in the administration of Title I, and issues underlying the legislative consideration of changes in that role in 1978; (2) the new structure and requirements for Federal administration of Title I, as enacted in the 1978 Education Amendments; (3) OE efforts to address mandated legislative requirements; and (4) findings of the study and recommendations.

NOTES

[1] The law implementing the Department of Education (Public Law 96-88) assigns all functions of the OE Commissioner of Education to the Secretary of the new Department. Therefore, all of the Commissioner's responsibilities under Title I will be transferred to the Secretary when the Department is implemented.

[2] When the Congress considers new legislation on some topic (including a bill to amend a current law), the legislative proposal is generally considered first by the appropriate committees in both the House and Senate. In the case of Title I, any proposed amendments are customarily reviewed and discussed by the Elementary, Secondary, and Vocational Subcommittee of the House Education and Labor Committee and by the Education, Arts, and Humanities Subcommittee of the Senate Human Resources Committee. When approved by the appropriate committee, the bill is "reported out" of committee, often with a committee report which sets forth the committee's views on various aspects of the bill. After enactment, the committee reports are frequently used as resource documents to assist the Executive Branch and the public in understanding Congressional intent.

Since the Title I bills passed in the House and Senate in 1978 were not identical, it was necessary for their differences to be resolved in a conference committee, composed of designated members of the relevant House and Senate committees. The 1978 conference report on Title I is fairly brief and does not contain as much general information as do the individual House and Senate committee reports on Title I.

Section I. BACKGROUND ON THE FEDERAL ADMINISTRATION OF TITLE I

This section of the report presents (1) summary information on Title I allocation procedures, current funding levels, and requirements imposed on LEAs; (2) a discussion of the importance of Federal administration in preserving the categorical purposes of the program; and (3) a description of issues and trends characterizing the Federal administration of the program in 1978.

HOW DOES TITLE I WORK?

Since 1965, Title I of the Elementary and Secondary Education Act has been the centerpiece of Federal aid to elementary and secondary schools. As noted in Table 1, almost $3 billion in Title I funds are being distributed to LEAs in Fiscal Year 1980. Funds are received by LEAs through a formula-based process in which funds are first allocated by OE to each State educational agency (SEA) and then allocated by each SEA to LEAs in that State. The SEA awards funds to individual LEAs only after it approves the application submitted by the LEA describing its plans for expenditure of Title I funds. (In a change made by the 1978 Amendments, LEA applications will be required to be submitted to the SEA only once every three years, and, similarly, SEA applications to OE will now be required only once every three years.) The amount of each LEA's grant is determined by its population of children from low-income families.[3/] Once received by the LEA, Title I funds are generally used to provide supplementary educational services to children (1) who are enrolled in the LEA's school attendance areas with the highest poverty concentrations and (2) who have the greatest need for educational assistance, as compared with other children enrolled in their attendance areas. Persons responsible for the Title I allocation process in the Title I program office (officially designated as the OE Division of Education for the Disadvantaged) estimate that about 6 million

TABLE 1

TITLE I APPROPRIATION FOR FY 1980

Program Category	Dollars Appropriated in Millions	Program Sub-Totals in Millions	Percent of Total Title I Appropriation
LEA grants			
Regular grants	$ 2,630.0		
Concentration grants	196.7		
State incentive grants	14.7		
		$ 2,841.4	85.3%
Migrants		245.0	7.4
Handicapped served by State institutions		145.0	4.3
Neglected or delinquent in State institutions		35.6	1.1
State administration			
Regular grants and State agency programs	47.0		
Concentration grants	2.9		
State incentive grants	0.2		
		50.1	1.5
Evaluation and studies			
Regular grants and State agency programs	13.0		
Concentration grants	0.4		
State incentive grants	0.1		
		13.5	0.4
TOTAL		$3,330.6	100.0%

Source: OE Division of Education for the Disadvantaged public school students receive Title I services at the present time, or almost 20% of all students enrolled in public schools. They also estimate that Title I accounts for about 4% of total expenditures for public elementary and secondary education.

Educationally disadvantaged children who live in attendance areas served by Title I schools but who attend private schools are also eligible to receive Title I services. Sources in the Title I program office estimate that over 200,000 students enrolled in nonpublic schools receive Title I services at the present time, or about 5% of all students enrolled in private schools. When asked about the amount of Title I funding used for services to private school students, sources in the program office reported that no such data have been compiled and that LEA grantees are not asked to account separately for services to private school students in their Title I application.

Table 1 contains information on the Title I appropriation for FY 1980, as reported by the Title I program office. Funding for LEAs under Title I totals $2.841 billion in FY 1980 (or 85.3% of the total Title I appropriation). These funds are divided among three Title I categories. Inspection of Table 1 reveals that regular Title I grants to LEAs total $2.630 billion in FY 1980. Concentration grants, which supplement regular grants and are awarded to LEAs with particularly high poverty concentrations, total $196.7 million. State incentive grants, which provide funds on a matching basis to LEAs in States operating their own compensatory programs and which are also supplementary to regular grants, amount to $14.7 million in FY 1980 (or possibly less, depending on possible budget cut-backs).

In addition to the LEA portion of the program, Table 1 illustrates that in FY 1980 the program provides $245.0 million in services to children of migrant workers (or 7.4% of the total appropriation), $145.0 million in services to handicapped children served by State institutions for the handicapped (4.3%), and $35.6 million in services for neglected or delinquent children served by State agencies (1.1%). A total of $50.1 million is available across all Title I activities for administration by SEAs (1.5%). A total of $13.5 million is available for Title I evaluations and studies (0.4%). Appendix B presents a State-by-State analysis of Title I funding for FY 1979, the most recent year for which State data are available.

Although these very large sums are distributed on a formula basis, the administration of the program has never been construed by Congress only as an allocations function. The importance which Congress attaches to Title I administration is reflected in the very specific program requirements imposed by Congress to guide LEAs in their use of Title I funds. School and student selection requirements (described in Sections 122 and 123 of the Act) are intended to target dollars on low-achieving students who are enrolled in schools with high concentrations of children from low-income families. The funds allocation requirements (described in Sections 126, 131, and 132 of the Act) govern the way LEAs use their funds from State and local sources to provide educational services to Title I and non-Title I students enrolled in their schools; these requirements are intended to ensure that Title I participants receive their fair share of services funded from State and local sources. The program design and implementation requirements (described in Section 124) are intended to maximize the likelihood that the educational services actually delivered using Title I grant moneys will be high in quality and result in increased student achievement. Other requirements are also imposed on LEAs including those pertaining to services for private school students (in Section 130) and parental involvement (in Section 125).

WHY IS FEDERAL ADMINISTRATION IMPORTANT TO THE OPERATION OF TITLE I?

By statute, Title I has always been a program delivering categorically targeted assistance to students according to specific rules such as those described above. However, as Title I appropriations have grown, some educators and politicians have come to see Title I as an appealing source of funds to provide educational assistance to students who are not legally eligible for Title I but who may have one or more educational needs which otherwise cannot be met due to limited resources.[4] In the face of resulting pressures to use Title I as a source of unrestricted aid, the extent to which Title I operates as a targeted, categorical program is largely determined by the seriousness with which Federal administrative responsibilities are discharged.

Though never successful in Congress, proponents of unrestricted Federal aid to education have argued that the dollars available under Title I could be put to better use if LEAs were permitted to use those funds to upgrade educational programs available to all students. Advocates of the categorical purposes of Title I, who have pressed to maintain the original low-income focus of the program, have been more concerned with the relative educational status of disadvantaged children in comparison with their more advantaged peers. These supporters of Title I note the continuing wide disparities in achievement between lower and higher income groups and between minority and non-minority racial groups. They also point to the continuing statistical linkage between employment and education. They note that despite certain improvements in opportunities for persons from minority or low-income backgrounds, the overall status of disadvantaged groups in the U.S. does not appear to be improving significantly. From this perspective, any weakening of the categorical focus of Title I represents absolute harm to those who are the most disadvantaged and permits a potential widening of the gap between disadvantaged children in America and all other children.[5]

Despite a series of proposals for consolidation of Title I and other categorical programs into Federal block grant funding (which would effectively convert Title I into general aid), the Congress has continued to reaffirm the categorical nature of Title I.[6/] This position is forcefully articulated in the committee reports which have accompanied the various program reauthorizations (for example, Committee on Education and Labor 1978, pages 4-5) and in the policy statement (Section 101) of the Act itself. Most importantly, however, Title I's orientation toward the needs of educationally deprived children in predominantly low-income schools is seen in the requirements operating at the LEA level which determine the shape of local Title I programs. Since these requirements provide guidance to local school administrators responsible for assuring that Title I funds serve only eligible children, it is essential that the rules for administering these requirements be clear, that local compliance with the rules be monitored in a regular and consistent fashion, and that penalties for non-compliance be applied wherever appropriate.

Guidance in these actions can be provided only at State and Federal administrative levels above the LEA. The division of responsibility between State and Federal levels must be clear in order to avoid duplication of activities or, worse, the complete omission of important administrative or oversight responsibilities. As a practical matter, the extent to which Title I operates in the Congressionally-intended, categorical fashion is largely determined by Federal actions specifying and explaining Title I rules, by Federal oversight of State and local actions in implementing the rules, and by the consistent application of corrective measures and penalties. Without such administrative action at the Federal level, there can be no assurance that Title I requirements will be implemented at local levels and thus that the intended beneficiaries -- disadvantaged children — receive the services the program is designed to deliver.

WHAT ISSUES AND TRENDS CHARACTERIZED THE FEDERAL ADMINISTRATION OF TITLE I IN 1978?

In 1978 Congress had at hand considerable information on Title I operations and extensive OE management experience to use as a guide in improving Federal administration of Title I. It also had the support of the public, the President, and Congressional leaders for making such improvements.

High levels of public acceptance and support for Title I

Public support for Title I could be seen from three separate perspectives in 1978.

The program was receiving significant appropriations increases after a period of slow growth. Between 1968 and 1978 the appropriations for the program had more than doubled, from $1.191 billion in 1968 to $2.735 billion in 1978, according to figures reported by the Title I program office. A considerable amount of that increase had occurred between the FY 1977 and FY 1978 appropriations. For FY 1978 Congress had increased Title I spending limits by almost half a billion dollars (or 20%) from an FY 1977 level of $2.285 billion to the FY 1978 level of $2.735 billion. These increases made it possible to expand services for disadvantaged children (though such gains may have been eroded in recent years because of high rates of inflation). They also represented the solidification of Congressional support for the purposes of the program.

Title I programs were underway in almost all of the LEAs in the country. The early price for popular political support of Title I had been extension of program eligibility to any LEA enrolling at least ten children from low-income families. Although explicitly intended for educationally deprived children enrolled in schools with high enrollments of low-income children, Title I funds do not go only to LEAs characterized by a predominance of low-income, educationally deprived children. According to the statute, eligible children are to be served no matter what the characteristics of their LEA. (Indeed, today Title I operates in almost 14,000 of the total 16,000 LEAs in the nation.) Inevitably, this distributional approach has led to what some have called a dilution of program effect, in the sense that middle-class suburban districts generally receive at least some Title I support along with the poor inner-city and poor rural districts for which the program had in some ways been initially intended. A positive effect of this phenomenon is that in 1978 educators and politicians of all political stripes had a stake in the continuation of the program.

Moreover, they had a stake in the stability of the program at the local level. HEW audits, Title I program reviews, and other sources indicated that many key requirements of the Title I program had in 1978 finally taken hold in local districts (SRI International 1979).

Because of a general understanding that Title I should be improved within its current structure, no major proposal was put forth in 1978 to change in any important way the essential structure of the program, i.e., the type of children who receive services under Title I or the characteristics of the services they receive.[7]

There was no significant push to change the program's allocation procedures. Only two major changes in Title I were proposed in hearings prior to committee consideration of reauthorization proposals for Title I. Congressman Albert Quie (R.-Minn.) had proposed to switch Title I to an achievement-based allocation formula. This change was rejected by the members of the House committee. The other proposal was to update the low-income statistics on which Title I allocations are based, through a shift from 1970 census data to the 1975 Survey of Income and Education. The more recent data showed changes in national poverty patterns, mainly indicating more poverty than previously in the Northeast and Great Lakes regions (National Institute of Education 1977b, page 73). This change was endorsed by States which stood to benefit from the use of the more recent data, e.g., Illinois, Michigan, and New Jersey, but it was ultimately rejected by the Committees on technical grounds.[8/] More importantly, the House and Senate committee chairmen had decided they did not want to submit the Title I formula to general debate, because such a debate would likely foreclose the possibility of considering the administrative and other improvements which were believed by House committee chairman Carl D. Perkins (D.-Ky.) to be of fundamental importance in 1978.[9/]

Broad body of administrative experience available for review by the Congress

After more than a decade of Title I operations, extensive information was available to Congress describing how the program worked at Federal, State, and local levels and what its problems were.

For the first time comprehensive base-line information was available on Title I administration. The Study of Compensatory Education conducted by the National Institute of Education (NIE) had devoted an entire volume to the Federal and State administration of compensatory education (National Institute of Education 1977a). With regard to Federal administration only, NIE had looked primarily at the legal framework of Title I and the application of that framework to program operations. NIE's findings were positive in several respects. For example, it found that the Title I legal framework was consistent and logical and that the regulations and other administrative guidance conformed to the statute. Second, the study found that OE in fact used the framework as the basis for administrative operations (and not some unwritten set of internal procedures unrelated to the law).

The NIE study also, however, uncovered several serious problems in the administration of the program:

- Inconsistent administration (Summarized from National Institute of Education 1977a, pages 23-44). The requirement to use Title I funds to supplement and not supplant State and local expenditures for children participating in Title I projects was not being administered consistently at the Federal level. This problem resulted from differences in legal interpretation as well as fundamentally different educational orientations in the Title I program office and and the office of the Associate Commissioner for Compensatory Education Programs (the office to which the Title I program director reported at that time). Although the program regulations were logical and were consistent with the statute, the discussion of the no-supplanting requirement in the regulations was not sufficiently specific to prevent disagreements over certain applications of the requirement. Not only had these disagreements halted progress on a number of administrative actions, such as the resolution of certain audits of SEA administration of Title I, they had also brought to a standstill efforts toward defining precise State and local responsibilities under the no-supplanting requirement, a key issue in many State and local Title I offices.

- Lack of clarity in rules and guidance (pages 17-18 and 21-22). The documents transmitting Title I rules and guidance to SEAs and LEAs often were not sufficiently clear and understandable to the individuals who had to translate this information into local decisions. More seriously, the many interpretive letters issued by the Title I program office in response to specific questions from State and local Title I administrators had not been assembled and disseminated to all potential users of that information. Thus, certain Title I offices were operating with more (and therefore sometimes different) information than that available to other Title I units. In short, Title I offices across the country did not know what clarifications had been issued on points of general concern to Title I administrators.

- Lack of resolution of audits (pages 37-44). OE's record with regard to the handling and resolution of Title I audit findings was extremely poor. Lengthy and in some cases intentional delays occurred in the handling of audits in which the HEW Office of the Inspector General had recommended the recovery of Title I funds. These delays were not only examples of very poor OE management practice, but more importantly they led to a loss of credibility for the audit process by the agencies that were themselves subject to the process. It should be noted that NIE attributed much of this delay to the internal OE disagreement over the proper interpretation of the Title I no-supplanting requirement. Though seemingly trivial, this disagreement -- in its different forms -- permeates much of the discussion of Title I administrative improvement.

Program staff had come to understand the value of on-site monitoring of Title I offices; yet Federal staff and travel resources were not adequate to support necessary monitoring activities. By 1978 Title I had become a recognizable fixture in the SEA institutional landscape. To administer Title I, SEAs were receiving annual Title I administrative allocations ranging from $150,000 in the nation's fifteen lowest enrollment States to $2.5 million in New York. (Inspection of Table 1 shows a total of $50.1 million allocated in FY 1980 for State administrative activities.) Title I offices operating under a Title I State director existed in each State. These offices had responsibilities for application review, monitoring of local projects, and reporting to the OE headquarters office. After attempting to exercise Federal oversight through the exchange of correspondence and reports, OE had acknowledged that the only reasonable way to review State operations was through on-site monitoring visits by Federal personnel. These visits were crucial in determining such basic facts as whether or not the State employees charged to Title I were physically located in the Title I unit, whether the office had reasonable procedures which it followed in conducting its activities, and the extent to which the Title I office coordinated its efforts with other State education functions.

Despite the need for on-site visits, the Title I program office had been severely curtailed in carrying out its State monitoring function due to continuing shortages of staff and travel resources. Although the heads of other program offices in OE complained about such shortages also, Title I apparently bore the brunt of this problem for the agency. According to data compiled in 1977 by the National Center for Education Statistics (NCES) for the House Subcommittee on Elementary, Secondary, and Vocational Education, Title I's share of OE personnel positions was disproportionately low, even when compared only with other OE State grant programs. Table 2 is an excerpt from data prepared by

TABLE 2

FY 1977 STAFF ALLOCATIONS FOR LARGE STATE GRANT PROGRAMS

Type of Assistance	Authorizing Legislation	Percent of Total Appropriation for Elementary and Secondary Education FY 1977*	Percent of Total Positions in Elementary and Secondary Education as of 6/30/77**
Programs for Disadvantaged Children	Title I, ESEA	36.8%	7.3%
Vocational Education Basic Programs	Vocational Education Act, Parts B, E, F, H, J, and Sec. 102(b)	11.4	7.8
Programs for the Handicapped -- Aid to States	Education of the Handicapped Act, Part B, as amended by P.L. 94-142	4.3	5.4
Adult Education	Adult Education Act	1.7	4.0

Source: National Center for Education Statistics

*Total appropriations for these programs in FY 1977 was $4.669 billion.

**Total number of allocated positions on June 30, 1977, was 834.

NCES for the House Subcommittee. This table presents information only on Title I and on OE's other large State grant programs which could be considered comparable to Title I.

Inspection of Table 2 reveals that, although Title I constituted 36.8% of the elementary and secondary budget in FY 1977, it received only 7.3% of the Federal elementary and secondary staff positions for that time period. The three smaller State grant programs -- in vocational education, handicapped education, and adult education -- each received staff allocations about equal to those of Title I, despite much smaller appropriations. According to the Title I program office, Title I's total staff allocation in 1977 was only 72 positions (including professional, paraprofessional, and clerical).

Thus, despite the acknowledged need for improved Federal monitoring of State activities, OE's administrative resources were allocated by OE Commissioners in such a way as to severely short-change the Federal Title I program office.[10/] It is not clear why this happened. One possible explanation is that because the OE organizational structure grouped a number of very different yet important programs under the Deputy Commissioner for Elementary and Secondary Education (e.g., Title I, Emergency School Aid, Impact Aid, ESEA Titles IV and V, and Follow Through) that Deputy was less likely to argue strongly for his Bureau's largest program, Title I. The Deputy Commissioners for Education of the Handicapped and for Occupational and Adult Education were, however, more likely to see their respective State grant programs as the heart of their bureaus' efforts and therefore argued more forcefully for increases in administrative resources to accommodate administrative needs for those programs. Whatever the organizational reasons contributing to low administrative allocations for Title I, it is reasonable to speculate that an underlying cause was the agency's view (outside the Title I program office) that the Federal role in Title I was essentially check-writing.

Title I program reviews and audits indicated that States and LEAs were administering projects more consistently with Federal intent than had previously been the case. A recent report by SRI International for the HEW Assistant Secretary for Education analyzed (1) HEW audits of Title I operations, (2) certain audits conducted by the Government Accounting Office, and (3) Title I program reviews (which summarize the findings of Title I monitoring visits to SEA Title I units). The audits and program reviews of a sample of 20 States were examined in the study, with the data divided into three time periods — 1965-69, 1970-73, and 1974-76.

The analysis of this information suggested that State and local administration of Title I was improving but that expectations about what constituted "good administration" were shifting.

> Over the three periods of the study an evolution occurred in the kinds of problems emphasized by the Federal reviewers. During the first period the emphasis was on defining the specifics of the Title I mandate and installing it as an identifiable part of the overall educational system. Findings in the second time period emphasized systems, procedures, and data. However, reviews during the last period placed a growing emphasis on quality and seemed to reflect a recognition of the limitations of procedures in designing and operating programs. New expectations and standards were always evolving even as the old ones were met. Therefore, problems persist partly because expectations have been continually rising. (SRI International 1979, page v of the Executive Summary)

According to SRI, early problems of use of Title I for general aid purposes and disregard of school and student targeting rules had dramatically diminished over the eleven years covered by the study. In their place reviewers found instances of much more subtle, sometimes controversial problems. For example, pages 103-106 of the SRI report note the following persistent issues:

- No supplanting and general aid rules. Problems were attributed to a lack of clarity in the interpretations of the rules and their applications to particular situations.
- Comparability of services in Title I schools to services in non-Title I schools. Major problems were due to a reluctance of States to enforce the statutory requirements.
- Parent involvement. Problems centered on questions about the effectiveness of parents' involvement in programs, the extent of needed training for parents, and ambiguities about the proper responsibilities of parent advisory councils.
- Student selection. States and LEAs were struggling with the issue of selecting participating students according to "greatest need" while considering the value of retaining current participants whatever their relative need for services.

- Private schools. Two persisting problems were the nature of the relationship between public and private school staffs and the operational meaning of "comparable services" for private school students.

- SEA monitoring and auditing. The HEW audits and program reviews revealed inadequacies in the frequency and scope of on-site visits.

Although this report itself was not available to the Congress at the time the 1978 Education Amendments were enacted, the report does suggest trends and problem areas in the Federal administration of Title I existing at the time that legislative deliberations were underway. Testimony heard by the House Subcommittee on Elementary, Secondary, and Vocational Education brought out these trends and problems in the context of specific State and local experiences in the implementation of Title I.[11]

To a growing extent Title I administration was being influenced by a set of informal mechanisms which encouraged improvement in certain administrative aspects of the program. Administration of Title I is usually considered in terms of the formal Title I legal framework, monitoring systems, and enforcement mechanisms. That is not the only Title I administrative structure, however. In a study by Paul Hill (formerly, director of the NIE Study of Compensatory Education), the argument is made that the administration of Title I depends on two distinct management systems. The first system is the formal system of rules, procedures, and mechanisms. According to Hill, the second system is the informal management system. "It operates through informal methods of persuasion, relying on the professional loyalties and pride of State and local administrators, and on the actions of local beneficiaries and supporters of Federal programs, to generate decentralized pressure for faithful adherence to Federal program objectives" (Hill 1979, page v of the summary). Although not explicitly considered by Congress in 1978, this system may offer significant opportunities for administrative improvement at all three administrative levels in Title I.

According to Hill, the key features of the system include the following:

- A network of State and local officials whose careers have become focused on the administration of Title I. Since their professional standing is founded on Title I, they can to some extent be relied on to take independent actions supporting the intent of the program.

- A set of non-fiscal sanctions and incentives that Federal officials can apply directly, free of formal review processes. The Title I program office has little control over Federal Title I audits either in identifying agencies to be audited or in determining how audit findings will be resolved. Through the informal system, however, the program office creates incentives for better State and local performance by singling out individuals and agencies for commendation, asking selected Title I coordinators to present information about high-quality programs, and circulating information on promising approaches in selected Title I sites. Such actions are a very tangible form of professional recognition to Title I professionals below the Federal level. Conversely, the officials of the program office can apply informal sanctions through selection of sites for their own program reviews and through the conduct of the program reviews themselves. (If the agency being monitored is not carrying out its Title I responsibilities properly, the review process itself can sometimes be so time-consuming and difficult for the agency that the process itself is a form of sanction.) Special help can also be given to Title I administrators as needed.

- Well-publicized national program evaluations. By focusing attention on Title I student achievement, local consciousness can be raised about Title I effects on participating students.

- Technical assistance in designing and operating high-quality instructional programs. Such aid can permit Federal officials to influence local decisions in ways that reinforce Title I design requirements. Moreover, such activities can create a setting for professional interaction by Federal, State, and local officials which can be helpful in encouraging greater professionalism and regulatory compliance in Title I areas outside instructional program design and operation.

- Organizations of private citizens who support the intent of Title I. Such groups can and do press for compliance with Title I requirements. In this role they can supplement OE monitoring efforts by bringing problems to the attention of Title I administrators at all levels.

Though not noted in Hill's report, civil rights-oriented consortia at the national level, such as the Education Coalition, have successfully pressed for improvements in Title I.[12] New groups such as the Federal Education Project of the Lawyers' Committee for Civil Rights Under Law and the National Coalition of Title I Parents are beginning to have a voice in Washington on behalf of the categorical goals of the program and support for increased funding of Title I. Although these groups have no legal standing in the administration of the program, the political influence they generate can be a source of needed administrative improvement, even greater perhaps than that achieved through formal channels.

SUMMARY

In 1978 when Congress took up Title I reauthorization, the program was providing major funding support for supplementary educational services to disadvantaged children. Despite some pressures to use Title I moneys in an unrestricted fashion at the local level, philosophical debates over Title I's categorical purposes did not occur in 1978, and the Congress turned to administrative improvement as the focus of reauthorization discussions.

The administrative focus was a reasonable one given the extensive information available from independent studies and from OE experience with the program. That information indicated that the Federal administration of Title I was being carried out in a manner generally consistent with the law but with certain inconsistencies and with a lack of clarity. Moreover, low Title I allocations for Federal administration were preventing the program office from monitoring SEA operations closely. Reviews that had been conducted, however, indicated that legal compliance was improving at SEA and LEA levels and that certain Title I requirements (including those concerning no-supplanting, comparability, and parent involvement) were more likely to underlie local problems than were other requirements in the statute. Finally, there were indications that informal administrative mechanisms might offer promise for improving Title I operations overall.

NOTES

[3] In the national formula, low income is determined according to the Federal poverty definition, which takes into account (1) the costs of adequate diets for families of differing sizes and types and (2) typical costs for other goods and services.

[4] See, for example, the statement of Michigan State Senator Jack Faxon, in hearings before the House Subcommittee on Elementary, Secondary, and Vocational Education (Subcommittee on Elementary, Secondary, and Vocational Education 1977, pages 144-157).

[5] For a discussion of these issues, see the statements before the House Subcommittee on Elementary, Secondary, and Vocational Education of Norman Chachkin on behalf of the Ad Hoc Coalition on Title I (Subcommittee on Elementary, Secondary, and Vocational Education 1977, pages 484-542); Owen F. Peagler, Chairman of the National Advisory Council on the Education of Disadvantaged Children (Subcommittee on Elementary, Secondary, and Vocational Education 1977, pages 95-135); and Joseph A. Califano, Jr., Secretary of HEW (Subcommittee on Elementary, Secondary, and Vocational Education 1978, pages 2-16, 41-59, and 321-326).

[6] The proposal for consolidation which has been considered most seriously is known as the Domenici-Bellmon bill. For a discussion of that proposal, see The Education Policy Research Institute 1979 and also Kearney and Vanderputten (eds.) 1979.

[7] "With recent evaluations showing progress, the Committee has concluded that now is not the time to depart from Title I basic philosophy" (Committee on Education and Labor 1978, page 8).

[8] The bill finally reported out of the House committee contained, however, a provision whereby funds appropriated in excess of the FY 1979 Title I appropriation would be allocated among the States according to the 1975 data. The provision was enacted, but with the amount to be allocated using the 1975 data limited to one-half of the increase in appropriations over the FY 1979 level (Section 111(a)(3)(D) of the Act).

[9] "...[T] his year represents an opportune time to 'fine tune' the program, to clarify any provisions which are causing problems, and to relieve some of the restrictions hampering the effectiveness of the program" (Committee on Education and Labor 1978, page 8).

[10] The Congress appropriates funds for OE's overall administrative expenses (known as the "Salaries and Expenses" account) in a single "line item" each year ($225 million in FY 1979, rising to $236 million in FY 1980). On the basis of recommendations from the Deputy Commissioners, the Commissioner decides each year how to allocate the total Salaries and Expenses budget across OE offices.

[11] See, for example, the statement before the House Subcommittee on Elementary, Secondary, and Vocational Education of Arthur Jefferson, general superintendent of the Detroit Public Schools (Subcommittee on Elementary, Secondary, and Vocational Education 1977, pages 164-194).

[12] See, for example, recommendations of the Coalition relating to Title I reauthorization (The Education Coalition 1977, pages 45-65).

Section II. CONGRESSIONAL DIRECTIVES TO OE FOR IMPROVING THE FEDERAL ADMINISTRATION OF TITLE I

Improvements in the administration of the program were among the highest priorities of the Congress in shaping the revised version of Title I enacted in the Education Amendments of 1978. The improvements requested by Congress were intended to achieve two main objectives -- (1) increased clarity and completeness in the structure and presentation of the program's administrative framework and (2) improvements in the rules and procedures forming the content of that framework. The latter objective was to be met by OE implementation of administrative procedures characterized by (1) interlocking and interdependent Federal, State, and local requirements for program management and oversight; (2) selective requirements for OE reporting to Congress; and (3) increased opportunity for public oversight at all three administrative levels of operation. Taken together, the structure was expected to create a complex system of agency and public cross-checks on Title I operations. Analysis of the statute and Congressional reports suggests that the ultimate goal of this system was to make it possible for LEAs to deliver improved services to the disadvantaged children whom the Congress intended the program to serve.

This section describes legislatively required changes in Title I designed (1) to achieve an administrative framework which was clearer and more comprehensive than the previous framework had been and (2) to improve the content of the framework. Four ways are described through which Congress sought to achieve the first objective: (1) improved dissemination of information by OE to Title I administrators, (2) promulgation of detailed regulations by OE, (3) more explicit statutory requirements, and (4) OE development of a Title I policy manual. The remainder of the section describes seven areas in which the content of the administrative framework was to be improved: (1) OE review of SEA applications and monitoring and enforcement plans, (2) audits and audit resolution, (3) complaint resolution, (4) enforcement, (5) evaluation, (6) reports to Congress, and (7) oversight by parents and the public.

WHAT STEPS DID CONGRESS DIRECT OE TO TAKE IN ORDER TO CREATE A CLEARER AND MORE COMPREHENSIVE FRAMEWORK FOR PROGRAM ADMINISTRATION?

Wide dissemination of specific rules

Congress wanted a more explicit framework for program administration. NIE found that Title I directors at State and local levels frequently did not know what their administrative responsibilities were nor did they understand what constituted compliance with their responsibilities (National Institute of Education 1977a, pages 17-18). Although they understood at certain levels what was generally required of them, at an operational level they frequently did not know their specific duties. State Title I officers, for example, knew they were required to certify the adequacy of LEA applications in their State prior to a certain date each year to maintain the flow of Title I funds to LEAs in the State. They had no general guidance, however, on whether or not they were required to review their State files on a given LEA's Title I program and consider such elements as previous Title I audits, monitoring reports, and public comments and complaints prior to approving that LEA's application. States developed their own application review procedures that usually conformed to that State director's view of what constituted proper program oversight. State-to-State variations tended to reflect the priorities of the State Title I director, some of whom were more interested in the instructional programs offered to Title I participants while others were more interested in the adequacy of local accounting procedures in case of Federal audit (Goettel et al 1977, pages 75-76).

Title I officials who were concerned about fulfilling their responsibility to review applications would have found little guidance in the program regulations in effect in 1978. The regulations simply stated in Section 116.5 (1) that the SEA was required to review all applications, (2) that a project was in effect when its applications was in "substantially approvable" form, (3) that LEAs whose applications were not approved could request a hearing and then could appeal to the Commissioner, and (4) that LEA applications and related documents were available to the public.

A State Title I director writing OE to request more guidance as to what steps and criteria should be used in reviewing LEA applications would probably have received a response from OE containing more detailed guidance than was contained in the regulations. But that information was not broadly disseminated, and fragmented understanding of the rules was permitted to persist (National Institute of Education 1977a, page 18). The fact of State-to-State variation did not, by itself, constitute a problem. The uneven distribution of information, however, undoubtedly masked instances in which State actions were not taken to correct LEA applications reflecting serious noncompliance with regard to the targeting of Title I dollars, the expenditure of State and local funds for services due Title I participants, and the establishment and functioning of parent advisory councils.

Because there was no comprehensive statement of Federal, State, and local administrative responsibilities, State and local administrators tended to take the most cautious route in administering Title I programs. Only by permitting the narrowest possible range of flexibility could administrators be sure that they were not violating key Title I requirements. The confusion over the interpretation of the Title I no-supplanting requirement provides a useful example of this tendency.[13/] Local administrators needed to know exactly how to comply with the no-supplanting requirement. To what extent must services to a Title I participant be scrupulously targeted to him or her alone with no spillover benefit to non-participants? To what extent must the special services to a Title I child be completely supplementary to the regular school program, e.g., must a student in a Title I compensatory reading program also receive instruction in the school's regular reading program? Because a number of local districts had been audited by HEW on their compliance with the no-supplanting requirement as interpreted by the Inspector General's office, many school districts sought to follow as safe a course as possible by separating Title I students from the rest of their classmates in "pull-out" instruction with other Title I students and a Title I teacher or aide. This practice permitted LEAs to keep careful accounting of Title I dollars spent on Title I participants and thus to maintain an "audit trail" in case of Federal audit, but it was not an instructional strategy chosen for its educational merit.[14]

Promulgation of regulations

Congressional concern with the lack of operational guidance to States and LEAs regarding no-supplanting and the other Title I requirements led the Congress to incorporate a greater level of administrative detail into the statute itself. For example, the 1974 Title I statute in effect at the time of the 1978 reauthorization contained no reference to the handling of complaints by parents and members of the public regarding State or local administration of Title I programs. Sections 116.6 and 116.7 of the regulations in effect at that time did, however, require SEAs to establish procedures for handling complaints and required reports to the Commissioner on the status of resolved and unresolved complaints. In a pattern reflected in several places in the Act, the Congress in 1978 essentially adopted the general content of the Title I regulations regarding the resolution of complaints by SEAs but significantly expanded those provisions by requiring OE (in Section 184 of the Act) and LEAs (in Section 128 of the Act) to adopt procedures for the resolution of complaints at their respective levels as well. OE was, moreover, required to prescribe criteria for the complaint procedures adopted by LEAs and to publish its own procedures for handling appeals of final SEA decisions on Title I complaints. The extension of the scope of the complaint resolution requirement provided avenues for handling complaints at all three government levels at which complaints might be filed. By requiring OE to go beyond the statute and to set more explicit criteria and procedures for complaint resolution, the Congress was attempting to make certain that all parties -- including persons submitting complaints -- knew exactly what was required and expected at all levels. In this fairly typical pattern, Congress thus (1) adopted earlier OE regulatory provisions where the statute had previously been silent on a certain matter, (2) extended the scope of the former regulatory provisions to cover a broader range of entities, and (3) required OE to promulgate new regulations adding greater detail to the new statutory requirements.

Requirements that OE regulate on specific matters occur throughout the 1978 statute. Review of the specific requirements suggests that, generally speaking, the regulatory provisions OE was asked to promulgate are intended (1) to outline specific procedures and timetables to be followed by States or LEAs, (2) to set standards for implementation of statutory provisions, or (3) to present models or examples of successful projects. These requests are stated explicitly in the statutory provisions to which they pertain. In addition to complaint resolution procedures, examples of other instances in which OE is asked to regulate on specific points in the law include the following, starting at the beginning of the Act:

- Section 111(a)(3)(A) of the Act directs OE to establish regulations for determining what State or local public agency other than an SEA shall receive certain Title I funds for neglected or delinquent children if the SEA does not assume responsibility for such children.

- Section 111(b)(3) of the Act directs OE to publish regulations to govern Title I allocations to LEAs in certain instances in which the LEA crosses county boundaries.
- Section 111(d)(2) of the Act directs OE to set criteria for making certain determinations with regard to allocations to the Department of the Interior for the conduct of Title I programs for Indian children.
- Section 122(d) and (e) requires the Commissioner to issue regulations governing exceptions to the basic procedures for determining which schools in an LEA may participate in Title I programs.
- Section 123(d) requires the Commissioner to issue regulations providing for certain exemptions to the general requirement that Title I serve the most educationally deprived children in Title I target schools.[15]

The statute contains many other such requirements for OE to issue regulations. In addition, the House and Senate reports on the 1978 statute also contain a number of requests to OE with regard to the content of certain regulatory provisions, e.g., the House report in its discussion of the participation of children enrolled in private schools urges "the strengthening of OE regulations ensuring that adequate information is made available about private school children's eligibility for Title I services" (Committee on Education and Labor 1978, page 33).

Adherence to explicit statutory requirements

Congress also sought to make local requirements more clear and comprehensive by making the statute so explicit that no question could be raised as to its proper interpretation. This approach is seen in the Title I provisions regarding parent advisory councils (PACs). The 1974 statute contained fifteen lines setting out the requirements for district-wide PACs and school-level PACs in Title I schools (Section 141(a)(14) of the statute). Regulations promulgated pursuant to those requirements were lengthy (two and a half columns in the Federal Register) and set out specific operating directions implementing the sketchy statutory provisions. Those regulations, for example, contained a requirement in Section 116a.25(g)(2) "That all council members will receive appropriate training materials and orientation which will assist them in carrying out their functions under this section." In addition, Section 116.36 of the regulations, which dealt with preservice and inservice training, identified "Parent Council members" among those persons eligible to receive Title I-funded training. Although the statute made no reference to the training of PAC members, the regulatory provisions as demonstrated above, gave operational definition to the general statutory requirement that LEAs provide PACs with "access to appropriate information" concerning the local Title I project. The 1978 statute expanded the earlier regulatory requirement for PAC "training materials and orientation" to a full-blown "program of training" for PAC members (in Section 125(d) of the Act). Further, OE is obliged to sponsor regional workshops to assist LEAs in providing training to PACs. NIE is required to study Title I parent involvement and PAC training methods. In the final provision of the section, Congress established a separate budget authorization for the OE training workshops and the study. Unlike some other parts of the law, Section 125 is thus sufficiently explicit that the Congress apparently did not believe it necessary to mandate that regulatory provisions be prepared. (In its June 1979 Notice of Proposed Rulemaking (NPRM), OE did publish supplementary rules governing PACs.)

Development of the policy manual

OE is, however, expected to include information on PACs in the legislatively mandated policy manual which will "assist advisory councils...in advising the LEAs in the planning for, and implementation and evaluation of, programs and projects under this title" (Section 187(a)(3) of the Act). This statutory request to OE is considerably more general than the instances of mandated OE regulations such as those addressing complaint resolution. The policy manual is, however, the logical outgrowth of Congressional concern that SEAs and LEAs receive extensive guidance on what is required and not required by Title I and that that guidance be available to all interested persons in a format which is clear and easy to understand. The statute mandates that the policy manual provide a historical and logical context for understanding the Title I program requirements. In addition, the law requires that the policy manual be as comprehensive as possible, including, for example, summaries of (1) all advisory opinions issued by OE on specific points of law in Title I, (2) final audit determinations, and (3) relevant court decisions. The policy manual is also expected to describe alternative instructional approaches which meet Title I requirements (by providing, for example, alternatives to "pull-out" instruction in Title I classrooms). Given the all-inclusive nature of the proposed policy manual, Congress in effect is expecting that the manual will encompass and expand upon a highly specific statute and a set of final regulations which the Congress expects will be the most detailed and far-reaching of any yet published under Title I.

By making the statute explicit, by directing OE to promulgate regulations on carefully defined questions, and by requiring preparation of the policy manual, the Congress sought to make the administrative framework for Title I as clear and as comprehensive as possible. But, one may well ask, to what end?

WHAT WERE THE SUBSTANTIVE IMPROVEMENTS CONGRESS SOUGHT TO ACHIEVE THROUGH THE CREATION OF THIS HIGHLY EXPLICIT FRAMEWORK FOR PROGRAM ADMINISTRATION?

As noted in the beginning of this section, the Educational Amendments of 1978 established a Title I administrative structure characterized by (1) interlocking and interdependent Federal, State, and local administrative functions; (2) selective requirements for Federal reporting to Congress; and (3) increased opportunities for public oversight of Federal, State, and local administrative activities. OE was directed to establish and implement this structure and to use it to promote accountability at all levels. The purpose of increasing accountability was to ensure more focused attention to the educational needs of Title I target children. The workings of this proposed system can be seen in five sets of Federal requirements in Title I -- those pertaining to (1) OE review of SEA applications and monitoring and enforcement plans (MEPs), (2) audits and audit resolution, (3) complaint resolution, (4) enforcement, and (5) evaluation. Congressional intent to give added force to these requirements can be seen in directives for periodic reports to Congress and for oversight by parents and the public.

OE review of SEA applications and monitoring and enforcement plans

The specific requirement for Federal review of SEA Title I applications, as stated in Section 182 of the statute, is relatively straight-forward. The Commissioner shall not approve an SEA application until it has been established that the contents of the application conform to (1) rules for the content of the State MEP, (2) assurances required under the statute, and (3) assurances required under the State administrative provisions of the General Education Provisions Act. In addition, the cross-reference in Section 182 to Section 162 requires the Commissioner to request any information which may be necessary to determine whether an SEA application should be approved. Section 164 pertaining to SEA review and approval of LEA applications states that an SEA may not approve an LEA application until the SEA is satisfied that a series of requirements have been met, including requirements (1) that the LEA not be out of compliance with an SEA or OE determination that it repay misused funds or out of compliance with a Title I compliance agreement, (2) that the SEA has considered the results of pertinent Federal and State audits and monitoring reports, (3) that the SEA has considered pertinent complaints lodged by parents and other persons, and (4) that the SEA has considered relevant Title I evaluations. Although information on SEA procedures for review of LEA applications is not explicitly requested for inclusion in the SEA application to OE, the SEA is required by Section 162(b)(1) to assure that proper review procedures are met prior to approval of an LEA application.

The State's MEP is required to be submitted with its Title I application at least once every three years, and in the years in which a plan is submitted the State is also required to report on its monitoring and enforcement efforts over the preceding period. The law requires that the plan itself be detailed, including schedules and procedures to be followed with regard to monitoring and auditing of local projects and the resolution of complaints. The law requires also that the plan include information on how the SEA will determine compliance with certain requirements related to private school children.

The specific requirements for the State MEPs and the SEA requirements with regard to review of LEA applications and on-site monitoring of LEAs reflect a pattern of interrelated Federal, State, and local oversight of programs and of three-way responsibility for improving local programs. State monitoring of local projects is addressed both in the requirements for SEA review of local applications (in which the SEA is required to have considered the results of the monitoring reports pertaining to that LEA) and in the requirements for OE review of an SEA application (in which OE is required to review the State's MEP and, by implication, the State's periodic monitoring and enforcement report). Similar interrelationships exist with regard to other OE and SEA requirements.

Congress clearly expects this framework to provide cross-checks to ensure that program administrators are held accountable for the performance of legislatively required monitoring and enforcement. Congress also considers OE to be the agency responsible for setting the necessary systems in motion. In its comment on SEA review of LEA applications, the House Committee on Education and Labor states, for example, that "more effective State performance of the application approval function would be facilitated if the Commissioner were to provide increased technical assistance to SEAs, including model application approval procedures to relate application approval to other administrative functions and a model application form to assist SEAs in designing forms for their own use" (Committee on Education and Labor 1978, page 43).

Audit activities

The 1974 statute did not directly address the need for audits of Title I programs. The NIE report on administration of compensatory education noted, however, the importance of auditing in program management and the lengthy delays in OE's processing of audits conducted by the HEW Office of the Inspector General. (See Section I of this report for information on the NIE findings.)

In the 1978 Amendments the Congress adopted two major requirements with regard to the regular auditing of State and local Title I activities. In Section 170 of the Act, States are required to audit the "fiscal integrity" and legal compliance of local projects. SEAs are also required to adopt audit resolution procedures which conform to "minimum standards established by the Commissioner."

LEAs and State agencies are required to repay any misspent funds, as identified in a final audit determination, from non-Federal funds or from Federal funds for which no Federal accountability is required (such as Impact Aid). LEAs or State agencies may appeal to the Commissioner to reverse an unfavorable audit determination, but if the Commissioner upholds the audit determination the agency must either commence payments or OE must start collection action. A State's procedures for implementing these requirements are to be set forth in its MEP. Although most States have conducted fiscal audits of their own Title I activities, the new statutory provision makes explicit their auditing responsibility for fiscal as well as compliance matters.

At the Federal level, Section 185 of the Act requires the HEW Inspector General to audit Title I grants to determine (as in Section 170) the "fiscal integrity" and legal compliance of Title I transactions. The Commissioner is required to adopt procedures, including timetables, for the resolution of audits conducted by HEW.

In imposing requirements for auditors and audit resolution at both the State and Federal levels, the Congress sought to clarify the audit responsibilities of the SEAs and OE. Analysis of the statutory requirements suggests that the Congress was also saying that audit responsibilities at each level were broad and comprehensive. Both State and Federal levels were responsible for conducting audits of Title I grantees; those audits were to cover both fiscal and non-fiscal matters; both OE and the States were responsible for resolving any disputes over audit findings in a fair and expeditious manner; and both were responsible for collecting funds finally determined to be owed to the government. OE's responsibility in these matters was particularly important because it was specifically charged with setting standards and criteria for State procedures and for monitoring State audit resolution activities.

The committee reports on Title I put particular emphasis on improving audit performance and set out specific items not in the statute which are to be included in Federal and State procedures. The House Committee on Education and Labor for example, states that it expects OE's audit resolution process to include "(1) a mechanism for coordinating audit resolution among the various responsible offices; (2) common audit standards agreed upon by OE, the Office of the Inspector General, and HEW's Office of the General Counsel; (3) standards for adequate documentation of audit findings; (4) regular audit status reports...; and (5) methods for audit follow-up to ensure that corrective action has been taken" (Committee on Education and Labor 1978, page 54).

Finally, new OE-wide provisions enacted in the 1978 Education Amendments (as stated in Section 1232, amending the General Education Provisions Act through the addition of a new "Part E - Enforcement") established the Education Appeal Board, which assumed the duties of the previous Title I Appeal Board and extended those duties to cover other OE programs in addition to Title I. Section 1232 also included a new provision whereby OE can return 75% of those funds which an SEA or LEA has fully paid to OE as a result of a final audit determination. The latter provision was notable because it demonstrated that Congress did not intend for an audit determination to result in a major financial penalty to an SEA or LEA. It intended instead that audits be used as a means for effecting legal compliance. In cases where compliance was achieved after the audit determination, the legislation provides for the return of 75% of the funds paid by the SEA or LEA to OE.

Complaint resolution

The purpose underlying complaint resolution procedures is to provide parents and other individuals with a mechanism to use in going over the heads of LEA administrators whenever they find it necessary to voice objections about the administration of a Title I project. According to the Title I statute, the mechanism should permit an individual to bring problems to the attention of local officials and, if appropriate relief is not granted, to raise those problems to the State level. If necessary, an individual should be able to voice his or her concerns directly to OE. These requirements are specified in Sections 128 (LEA procedures), 168 (SEA procedures, and 184 (OE procedures).

Although not addressed in the 1974 law, the regulations in effect in 1978 included requirements that SEAs establish procedures for investigating and resolving complaints brought by individuals, private organizations, and LEAs. (See discussion at the beginning of this section.) The 1978 statutory amendments adopted the earlier regulatory mandates and extended them to require complaint handling procedures at the LEA level, to permit complainants to appeal SEA final decisions to OE, and to permit them to submit complaints directly to OE. OE in turn is required to "develop and implement written procedures" for receiving and resolving such appeals and direct complaints and for conducting appropriate on-site investigations where necessary.

The Congressional purpose in establishing OE's responsibility for complaint resolution was to permit appeals of State decisions and thus to create, in effect, a safety valve for incorrect judgments at the State level. The House Committee report on Title I notes "the need, generally, for a comprehensive system of procedures interlocking all levels (LEA, SEA, and OE)..." with respect to complaint resolution (Committee on Education and Labor 1978, page 45). The statute intended the SEA to be the primary agency responsible for receiving and resolving complaints but expected also that OE would guide and monitor State activities and would serve as the agency of final appeal.

Enforcement and sanctions

The NIE report on administration and other earlier reviews of Title I administration (such as The Education Coalition 1977) were critical of OE's lack of enforcement action against those LEAs and SEAs not in compliance with Title I requirements. OE's defense had been that its only enforcement mechanism was the withholding of all Title I funds from a non-compliant agency, which punished the children for whom services were intended more than the agency itself.

The Congress responded to this problem by directing OE in Section 186 to establish a two-step enforcement system under which (1) OE can enter into a "compliance agreement" with any SEA which is not in compliance with a Title I requirement and which can show that "full compliance with the requirements of this title is genuinely not feasible until a further date" (as described in Section 186(c) of the Act) and (2) OE can institute partial withholding of funds in instances where complete withholding is not appropriate (as described in Section 186(a) of the Act). (Section 186(a) also authorizes complete withholding of Title I funds in appropriate circumstances. Section 453 of the General Education Provisions Act provides comparable withholding authority; Section 457 of that Act authorizes the Commissioner to issue "cease and desist" orders.) Analysis of the likely effects of the new provisions suggests that the purpose motivating the Congress in establishing this new system was to make Title I enforcement less of an all-or-nothing process and thus to make it more feasible for OE to take necessary enforcement steps. In the pattern noted previously, the Congress directed that this enforcement system be instituted at both the State and Federal levels, thus permitting compliance agreements and partial withholding to be used as enforcement tools at both levels. State-level provisions are set out in Section 169.

The Committee reports indicate that the Congress intended OE to provide clarifying regulations on several points regarding enforcement. With respect to State enforcement responsibilities, the House report directed OE to make certain that Title I regulations "(1) are organized to facilitate State enforcement of Title I requirements and (2) contain a section describing options and sanctions and the legal basis for such sanctions" (Committee on Education and Labor 1978, page 46). The House report also noted "that the Commissioner would be aided in making a finding of 'a failure to comply substantially with any assurance set forth in the application' if the Commissioner adopted and applied standards that give meaning 'to a failure to comply substantially'" (Committee on Education and Labor 1978, page 54).

Evaluation

Among other requirements related to evaluation, the 1974 statute directed OE to develop models for use by LEAs in conducting local evaluations. In addition to assisting LEAs in producing useful evaluative data for local planning purposes, the models were intended to yield data which could be aggregated on a national basis to yield good information on overall Title I effectiveness in meeting educational objectives. Serious problems were encountered by OE in developing and implementing these models (General Accounting Office 1977). The House Committee report in 1978 cited GAO's conclusion that, as stated in the House report, "questions exist about whether Title I evaluation models will be able to provide valid and acceptable data to meet [local] program information needs" (Committee on Education and Labor 1978, page 51). The House in its report asked OE to assess whether or not the information yielded by the OE evaluation models could be improved to provide assistance for local planning needs as well as national program evaluation requirements. OE was also requested to improve the current evaluation system, including possible requests for legislative amendments.

In other comments on OE's practices with regard to Title I evaluations, the Congress asked that OE consult more broadly with State and local officials and experts in setting evaluation timetables and in designing evaluation approaches to Title I (Sections 183(b) and (d) of the Act). The House report noted the need for OE to provide evaluative data to the Congress on a timetable consistent with the Title I reauthorization schedule and on a more frequent basis (Committee on Education and Labor 1978, page 52).

The interlocking pattern of Federal and State requirements is demonstrated again in the case of program evaluation through the requirement that SEAs provide technical assistance to LEAs in the evaluation of local programs (Sections 166 and 183(e) of the Act). Since SEAs serve as program intermediaries with regard to evaluation, the Congress expects them to act as a check on both local and Federal errors of judgment and execution. This role is reinforced by the requirements noted above that OE consult with State experts and others on evaluation timetables and methods.

Local responsibilities are highlighted in the 1978 statute through new requirements in Section 124(g) aimed at using evaluation results for practical, program planning purposes.

Periodic reports to Congress

The 1978 statute requires OE to submit periodic reports on evaluation results (Section 183(g) of the Act) and on enforcement matters (Section 188 of the Act). The requirement for the evaluation report was carried over from the 1974 law, with a reduction in its frequency from annual to biennial. The enforcement report, a new requirement, is to be submitted to Congress on the same schedule as the evaluation report.

The two reports taken together require OE to provide Congress with information on specific items related to four of the five areas discussed above -- approval of SEA applications (including monitoring plans and data), audits and audit resolution, resolution of complaints, and evaluations. The only major administrative matters not explicitly addressed in either the evaluation or enforcement reports are OE enforcement actions regarding (1) OE/SEA compliance agreements and (2) the withholding of Title I funds.

Legislative directions to OE concerning the enforcement report are quite specific, with, for example, twelve major categories of information requested with respect to Title I audits alone. The Senate report on Title I states why this information is important:

> The Committee hopes that Congress will no longer have to wait years before inadequacies in (Title I) administration are brought to the public attention. The public is insisting on greater accountability on the part of the Federal Government and deserves to get it. The enforcement report will provide the information that is basic to oversight of OE's administration of Title I... (Human Resources Committee 1978, page 35).

Oversight by parents and the public

The most obvious example of legislative intent to increase opportunities for parent and public oversight is in the discussion of the increased role of Title I PACs, as set out in Section 125 of the Act. As noted earlier, the 1978 statute delineates PAC authorities and responsibilities more specifically than did either the prior statute or regulations.

Probably the most important new provision in Section 125 is the requirement that "each SEA shall provide a copy of any report resulting from State or Federal auditing, monitoring, or evaluation activities in any district to the (district-wide) parent advisory council...in such district." This provision indicates a clear intent on the part of the Congress that PACs serve as a check on SEA and LEA actions in administering Title I programs. Since the PAC cannot press for administrative improvement without information as to administrative problems, access to auditing, monitoring, and evaluation documents is essential.

The access of PACs to information pertinent to local Title I administration is a priority reflected throughout the statute. The provisions relating to complaint handling and resolution at Federal, State, and local levels, for example, require that PACs receive information about complaint resolution procedures and that PACs receive information about the resolution of complaints filed concerning their LEA. In addition, as noted previously, assistance to PACs in advising LEAs is one of the key statutory purposes of the Title I policy manual (Section 187(a)(3) of the Act), and the House report requires that PACs have access to the policy manual (Committee on Education and Labor 1978, page 28).

Another way in which Congress intended that PACs serve as a check on local administrative actions is through requirements that certain types of LEA decisions regarding Title I be approved by PACs before they become effective. Section 122(a)(2)(B) of the Act, for example, requires PAC consent before an LEA may designate Title I attendance areas using educational deprivation as a ranking factor. Section 133(b)(4) requires that the appropriate school-level PAC approve any plan to provide Title I services to all children enrolled in a high-poverty school.

PAC oversight of Title I administration was a clear priority of the Congress in establishing the new administrative relationships and systems for Title I. Like other parts of this interdependent, interlocking system, PAC influence was intended to have an effect at all administrative levels and in virtually all administrative functions.

SUMMARY

In the 1978 statute Congress laid the basis for a complex structure of cross-cutting responsibilities for program operation and oversight. Because this structure involved agencies at Federal, State, and local levels, Congress directed that OE take responsibility for setting forth a clear and comprehensive framework for program administration in the regulations and the policy manual. Congress also specified new operating responsibilities for Federal, State, and local agencies designed, in part, to increase governmental and public oversight of Title I activities. Taken as a whole, the new responsibilities were expected to increase the information available on Title I operations and in that way to promote continuing improvements in the delivery of educational services to disadvantaged children.

NOTES

[13] Section 126(c) of the 1978 statute states: "A local educational agency may use funds received under this title only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from regular non-Federal sources...for the education of pupils participating in programs and projects assisted under this title, and in no case may such funds be so used as to supplant such funds from such non-Federal sources." This language is essentially unchanged from the 1974 statute. The 1978 statute does, however, provide new clarification regarding the treatment of certain State funds intended for children who are disadvantaged, limited in English proficiency, or handicapped.

[14] For a discussion of the tendency of local Title I personnel to institute pull-out programs in response to Federal Title I regulations, see Silverstein and Schember 1977, pages 484-567 and 635-675.

[15] Listed below are summaries of OE's actions to date to implement these requirements:

- Section 111(a)(3)(A) Not treated in OE's January regulations.
- Section 111(b)(3) Treated in 116a.21(d) of the January regulations.
- Section 111(d)(2) Not treated in the January regulations.
- Section 122(d) and (3) Treated in Section 116a.43 and 116a.42 (c), respectively, of the January regulations.
- Section 123(d) Treated in Section 116a.45(c) of the January regulations.

Section III. OE'S RESPONSE TO THE DIRECTIVES ISSUED BY CONGRESS

This section of the report is introduced by a discussion of organizational and resource problems affecting the Federal administration of Title I. The section then reviews steps OE has taken to improve the clarity and completeness of the Title I administrative framework and steps taken to improve the content of the requirements and guidance within that framework. Under those two broad headings, OE's actions are described with regard to each of the general matters discussed in the preceding section on Congressional directives for improvement.

None of the changes called for in the 1978 Education Amendments should have been surprising or unexpected to OE. Most of the requested improvements, in fact, grew out of changes OE had already initiated through existing Title I regulations or out of recommendations made by NIE in its study of compensatory education. Nevertheless, OE has not fully implemented the changes, however expected or justified they may have been.

One serious problem for OE has been its organizational structure, which has hampered administration of the Title I program since its beginning (The Education Coalition 1977, pages 52-53). Although $3.3 billion will be spent on Title I in FY 1980, the Title I program is organizationally located far down the HEW pecking order. Until the new Department of Education becomes operational, the Title I director as indicated in Figure 1 reports to the Deputy Commissioner for Elementary and Secondary Education, who reports to the Commissioner of Education (though he reports to the Executive Deputy Commissioner for Programs on some matters). The Commissioner in turn reports to the HEW Secretary (though he reports to the Assistant Secretary for Education on certain questions).

This separation of the Title I program office from the Department's senior administrator has had two main effects: (1) it takes longer than it should for major decisions to be reached regarding program administration and policy and

ORGANIZATIONAL PLACEMENT OF TITLE I IN HEW

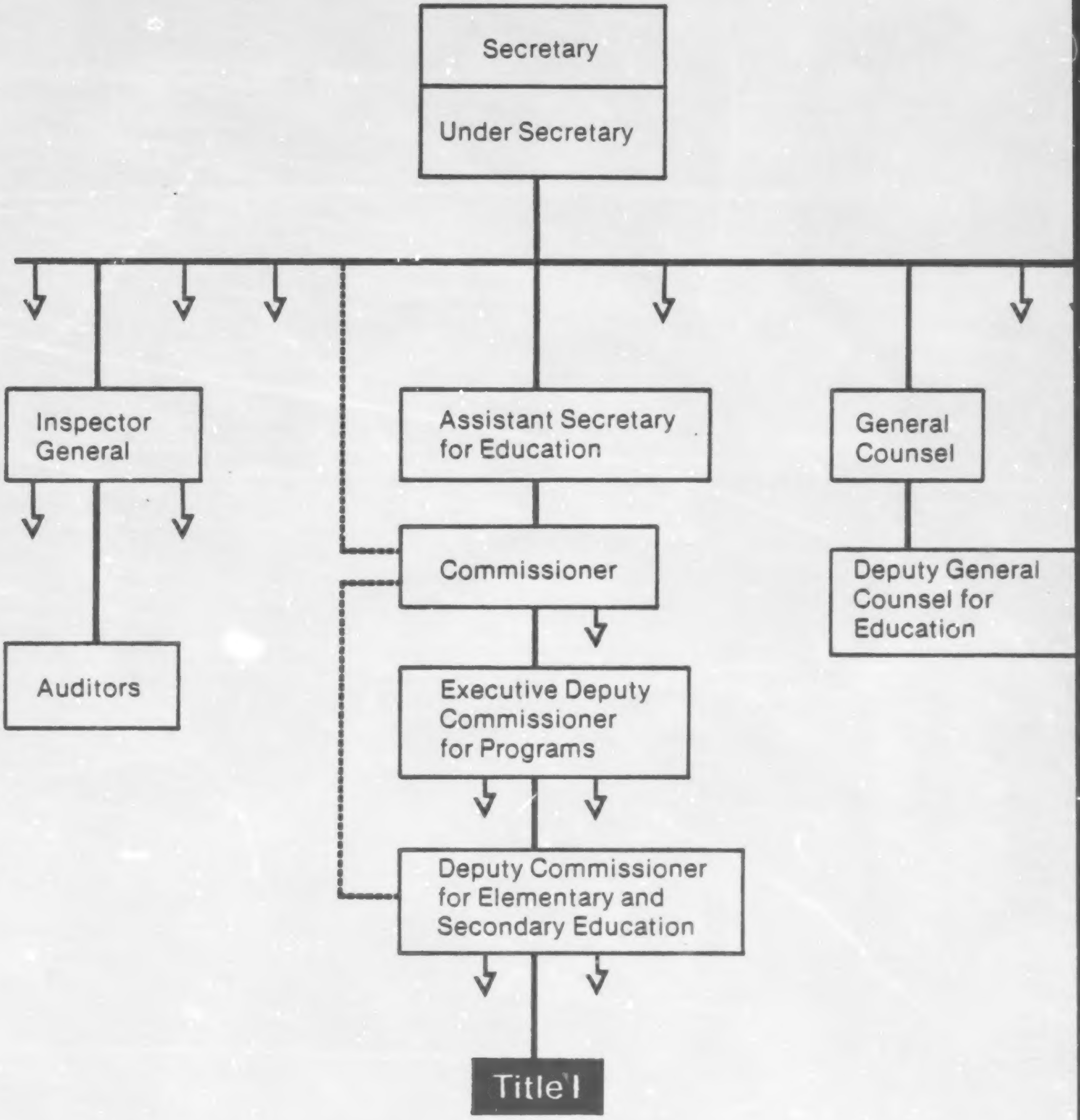
Secretary
Under Secretary
Inspector General
Assistant Secretary for Education
General Counsel
Commissioner
Deputy General Counsel for Education
Auditors
Executive Deputy Commissioner for Programs
Deputy Commissioner for Elementary and Secondary Education
Title I

FIGURE 1

Arrows indicate other reporting entit
not explicitly identified in this figure.

(2) the program office is organizationally removed from Congressional communications likely to indicate priorities or to provide feedback on program-level decisions. Major program issues requiring decision must percolate through the OE and HEW chain of command — with meetings held at each step along the way. Explanatory papers must be drafted and redrafted before a decision is made by the senior official, often after consultation only with his or her assistants and without discussion with the program personnel who have the most intimate knowledge of the problem being addressed. Decisions in such instances often take longer to be reached than they would if the Title I program chief had more direct access to the senior official. In a similar fashion the organizational structure inhibits adequate communication with Congress, either through legislative liaison officers in the Department or directly to committee staff. This lack of communication means that Congressional offices do not have access to up-to-date information on program-related matters, and similarly the program office is not able to respond to Congressional questions in a prompt manner.

Another result of the bureaucratic layering has been the program's poor bargaining position in the agency's annual internal negotiations over program budgets for "Salaries and Expenses," as noted in Section I of this report. See Table 2 for a comparison of Title I's staff allocation in FY 1977 with the allocations of three other State grant programs. Between FY 1977 and FY 1980 the staff allocation for Title I has increased from 72 positions to 92 positions, an increase of 28%. During that same period, however, the program's funding has increased from $2.3 billion to $3.3 billion, an increase of 43%. Although the two percentages are not directly comparable because of inflation, it is clear that the Title I program office's staffing situation has not improved in the past three years.

As a first step toward improving Title I's staffing pattern, the agency might undertake a systematic and careful analysis of Title I staffing. This analysis should include at least the following four components: (1) an assessment of the functions which the Title I office must perform in order to administer the program in conformance with the law and in conformance with acknowledged principles of sound management; (2) identification of staff capabilities required to implement the identified functions; (3) evaluation of the extent to which current staff in the Title I program office possess needed skills and is sufficient in number to perform these functions; and (4) identification of strategies to address staffing deficiencies, including retraining of current staff, reassignment as needed, and, if necessary, increasing the number of staff assigned to Title I. Such an analysis might also be conducted to assess Title I staffing needs and availability in the Office of the Inspector General (assigned to audit Title I State and local projects and to oversee implementation of new auditing requirements) and the Office of the General Counsel (assigned to handle Title I legal matters).

In addition to organizational and staffing problems, another reason cited in interviews for OE's failure to implement all of the changes in Title I was that OE's and HEW's leadership did not attach a high priority to the implementation of the 1978 Title I reauthorization, possibly because the changes to be made were not dramatic ones and because they generally fit in the category of "program administration" rather than "policy." According to available records, there were no meetings with the Commissioner or Executive Deputy Commissioner to discuss issues in the implementation of the 1978 Title I statute.

HEW's and OE's reliance on Title I program staff to take intelligent action without higher level oversight was understandable, given the program office's consistent record of adherence to the fundamental purposes of Title I. Through good days and bad, the program staff had steered clear of political interference from any source and had attempted to implement the law as faithfully as they could.[16] In fact, this dedication to Title I principles had led the program office to establish a practice of dealing with as many program issues as possible within the office itself without informing senior OE officers of problems and decisions facing the program.[17] This strategy was first used in the late sixties and early seventies when Title I supporters were constantly fighting battles to retain the targeted, categorical nature of the program. The program office learned to keep its collective head down in order to stay out of the attention of those who wanted to convert Title I to a no-strings-attached State block grant program.

By the time of the enactment of the 1978 Education Amendments, however, most of the block grant advocates had left the Executive Branch, and the program office's practice of trying to handle all program decisions internally was no longer a necessary strategy. Its practical effect in late 1978 and 1979 was that many actions required in the 1978 statute were not brought to the attention of the OE Commissioner, his immediate staff, or to senior HEW personnel. The program office took actions to implement the requirements of the new law, but it did so without the counsel of those in a position to establish priorities among the required actions and to assist the program office by providing it with additional resources.

As a result of these conditions and others described below, OE's efforts to implement changes in Title I Federal administration have been faltering and inconsistent thus far. Steps have been taken since January 1980 to improve OE's administrative performance in several respects, however. Many more steps can and must be taken.

None of OE's errors to date appear to be attributable to any conscious strategy of subverting the purpose of the new statute. Some may be attributable to an incomplete understanding of what the Congress was asking the agency to do. Others may have been caused by simple lack of attention and by bureaucratic caution and sluggishness. Regardless, there is no excuse for the failure of senior HEW and OE officers to issue acceptable regulations and a policy manual in the first eighteen months after enactment of the law. Nor can one excuse the failure to respond directly to the Congressional mandate for more aggressive leadership from the Federal level in implementing a coordinated Federal-State-local system of monitoring, enforcement, and public oversight.

WHAT DID OE DO TO IMPROVE THE CLARITY AND COMPLETENESS OF THE ADMINISTRATIVE FRAMEWORK?

OE's efforts to improve the administrative framework were centered on development of the new Title I regulations and policy manual.

Promulgation of draft regulations

Published in the Federal Register on June 29, 1979, the Title I NPRM reflected two new initiatives in OE, which had been formulated without regard to Title I. The first was Operation Common Sense, which was HEW's effort to simplify and shorten all Federal regulations issued by the Department. Writers of regulations were directed to use a simple, straightforward style of writing and to avoid jargon and complicated language. Moreover, they were directed to keep regulations as brief as possible by not repeating or paraphrasing statutory provisions that were self-explanatory and by providing the minimal amount of regulation in all other instances. The second initiative was the consolidation of regulatory requirements generally applicable to HEW Education Division activities into the Education Division General Administrative Regulations (EDGAR). The purpose of EDGAR was to simplify administrative requirements for Federal education grantees so that a single set of administrative requirements could apply to all Federal programs operated by an LEA or SEA. Since Operation Common Sense applied to the use of EDGAR, OE program regulations (such as those for Title I) were not permitted to repeat regulatory provisions contained in EDGAR.

Though laudible in theory, the effect of Operation Common Sense and, to a lesser extent, EDGAR on the Title I proposed regulations was seriously harmful. The Title I NPRM regulated on relatively few matters contained in the law and did not repeat or paraphrase most statutory provisions. All regulatory matters in Title I which were common to other State formula programs went into EDGAR and were not repeated in the Title I regulations. This meant that a State or local Title I administrator would have to use three primary documents in determining the main Title I requirements -- the Title I statute, the Title I regulations, and EDGAR. In addition, certain other matters concerning the management of Federal funds were covered by HEW-wide regulations contained in 45 CFR Part 74 and were not repeated in the Title I NPRM or in EDGAR.

The other very serious problem with the NPRM was that it simply did not address many matters on which the statute directed OE to regulate. This problem is discussed in more detail later in this section of the report, but the seriousness of these omissions cannot be over-emphasized. The reason for the legislative directions to regulate on matters such as, for example, Federal procedures for audit resolution (Section 185(b) of the Act) was to make certain that all affected parties were fully informed about the steps and time schedules that OE would follow in resolving audit findings. By not regulating (as OE did not), the agency continued a situation in which it must inform SEAs and LEAs on a case-by-case basis how it intends to proceed on each individual audit. As indicated in the statute, Congress wanted a system that would deal with Title I administrative matters, and it wanted that system to be fully communicated to all Title I administrative units. Further, the Congress did not want either (1) ad hoc procedures adopted according to the characteristics of individual problems brought to the attention of the program office or (2) a system known to the program office but not completely described to Title I administrators in SEAs and LEAs.

These serious deficiencies related to the Title I NPRM were described in the August 29, 1979, letter from Carl D. Perkins, Chairman of the House Committee on Education and Labor, to Mary F. Berry, the HEW Assistant Secretary for Education. Congressman Perkins noted four major problems in the NPRM, including (1) the need to use several different documents to administer a Title I project (e.g., Title I regulations, Title I law, EDGAR, etc.), (2) the illogical format of the regulations (e.g., failure to group together provisions that pertain to a single matter such as local program design), (3) the absence of regulatory provisions on at least 15 matters for which the statute mandated regulations, and (4) instances of regulatory provisions in the NPRM for which no legal authority existed in the statute. In addition to Congressman Perkins' concerns about the NPRM, other concerns were voiced in public comments on the NPRM from States, LEAs, educational associations, and private citizens.

It is important to note that OE listened and took steps to correct the problems. First, OE decided that making the regulations short was less important than making them complete. Where useful, OE decided, the regulations would repeat or paraphrase statutory material so that an SEA or LEA administrator could use the regulations as a comprehensive guide to Title I program requirements. Second, OE asked a knowledgeable outside expert, Robert Silverstein, to develop a suggested version of the Title I regulations which would fill in the gaps left by the first version. Silverstein's version was used by OE in preparing a more comprehensive set of regulations which have been made available for review by the public through a notice in the Federal Register (January 30, 1980). Title I officials state that they expect to have a complete redraft ready for publication in May 1980. It is expected that the May version of the regulations will be another NPRM (and therefore open for public comment). If so, final regulations are not likely to be issued until the fall of 1980.

Part of the delay and the uncertainty about the next version of the regulations has centered on OE debate about the no-supplanting requirement. Although the specifics of that controversy are beyond the scope of this report, it is important to note that two opposing camps in the dispute -- advocates for the handicapped and civil rights advocates -- have proposed a compromise on the no-supplanting question to OE. In a letter to William Smith, OE commissioner, dated January 14, 1980, representatives of the two groups set out suggested revisions in the regulations which would accommodate (1) the concerns of advocates for the handicapped that those children not be excluded from Title I and (2) the concern of civil rights advocates that handicapped needs not siphon off a disproportionate share of Title I funds.

Fall publication of final regulations will represent a two-year delay from enactment of the statute to issuance of usable regulations. Operationally, the delay means that Title I State and local grantees will have been bound by the requirements of the new statute for two years without benefit of implementing regulations. Stated another way, Title I programs will have operated two school years (most of 1978-79, 1979-80, and part of 1980-81) with new statutory requirements governing their operation but with only the out-dated Title I regulations to use as a practical guide to the specific rules which applicants and grantees are legally required to follow.

Development of the policy manual

OE issued a call for bids on the development of the policy manual in mid-February 1979. The contract (totaling $215,000) for the policy manual was awarded in early June to Education Turnkey Systems, Inc., of Falls Church, Virginia, and plans were premised on a May 1980 completion date. (The statute requires the policy manual to be completed within six months of the publication of final Title I regulations. In February 1979 it was assumed that a May 1980 completion date would accommodate the statutory requirement.) As called for in the statute and Senate and House reports, the contractor is preparing the policy manual based on a review of OE and HEW policy and procedural statements and interviews with potential users of the policy manual at State and local levels. Since much of the policy manual must, however, be based on the Title I regulations, the final product has had to be considerably delayed while the contractor awaits OE decisions on the content of the final regulations.

As currently planned, the policy manual will be published in two volumes. According to statements of the contractor, the first volume will be a straightforward guide on how to design and implement a Title I program within the legal framework established by the statute and regulations. It will contain examples of possible alternative approaches for dealing with specific problems. Among its other parts the first volume will contain a comprehensive discussion of PACs and issues relevant to their operation. This discussion is intended to be sufficiently self-contained to permit it to be excerpted from the policy manual and reprinted for PAC members and others. The second volume will contain the legal and technical material which the statute has required for inclusion in the policy manual, e.g., summaries of court cases, final audit determinations, and technical guidance previously issued by OE on a case-by-case basis.

In addition to the lack of final regulations, the preparation of the policy manual has also been affected by other OE problems. For example, the statute in Section 187(b)(6) says that the manual will include "model forms and instructions developed by the Commissioner for use by SEAs and LEAs" including application forms and monitoring instruments. (Model forms are discussed also on page 43 of the House report.) Since OE has not developed any model forms or instructions for LEAs, the policy manual cannot include them and thus will be initially deficient in that respect.

OE has not used the development of the policy manual as an opportunity to stimulate discussions with the Office of the Inspector General concerning topics of mutual concern. Section 187(a)(4) of the Act states that one of the purposes of the policy manual is to "insure that officers and employees of [HEW], including, but not limited to officers and employees...charged with auditing programs carried on under this title, uniformly interpret, apply, and enforce requirements under this title throughout the United States." In addition, Section 187(b)(4) states that the manual shall include "...procedures to be followed by the Commissioner and the Secretary [of HEW in]...resolving financial exceptions disclosed during audits..." In interviews for this report, the contractor and the OE project officer for the policy manual each stated that OE had not met with HEW auditors nor had the agency asked that the contractor meet with the HEW auditors in order to address the legislative objectives stated above. Congress clearly expects the policy manual to set out acceptable administrative and instructional procedures that do not unduly restrict local project directors but that do permit auditors to track the expenditure of Federal funds. These procedures are unlikely to be developed unless OE, the Office of the Inspector General, and the contractor for the policy manual work together to reach common understandings on these important issues.

HOW HAS OE IMPLEMENTED THE SUBSTANTIVE CHANGES IN FEDERAL ADMINISTRATION CALLED FOR BY THE NEW LAW?

Considered as a whole, the 1978 Federal administrative directives are intended to increase program accountability through a strengthened and more explicitly specified role for the Federal Government in Title I. OE is to provide guidance to the States in the form of standards for their performance and oversight of their effectiveness, but the States are to have the lead role in guiding and monitoring local Title I activities. Under the 1978 amendments, OE has a number of new checks on the adequacy of State performance, while the public has been given more checks on governmental performance at all three levels. Within this framework the Congress has given itself a means of selectively monitoring administrative activities at all levels through the mandated evaluation and enforcement reports, due in 1980, 1982, and 1984. Though OE has addressed each of the major changes set out in the 1978 Amendments, the agency has not yet fully implemented the changes. Based on the problems described, it appears that OE has not yet adopted the view of Congress that the Federal role in the administration of Title I should be considerably more active than it has been in the past. Described below are OE's responses to each of the legislative directives described in Section II of this report.

OE review of SEA applications and monitoring and enforcement plans

OE's actions to implement requirements for review of SEA applications and MEPs reflect a lack of internal coordination within the Title I program office and inadequate OE guidance to SEAs as to what constitutes an acceptable State application and MEP.

With respect to the SEA application for Title I funding, both the statute and the draft regulations available in January 1980 require that the Commissioner not approve an SEA application until "he is satisfied that the assurances in such application...will be carried out" (Section 182(a) of the Act). However, OE's Program Directive INST. A203-8 (issued April 3, 1979, to provide interim guidance to SEAs on State applications and MEPs) requests that each SEA make a general assurance of compliance with Title I requirements. Nowhere are the assurances specifically set out. Therefore, an SEA has the choice of either agreeing blindly to comply with all pertinent legal requirements or hunting through the 1978 statute to determine exactly which requirements the agency is assuring it will fulfill.

By failing to list the SEA's legal responsibilities in an explicit list of assurances, OE has lost the opportunity to make a very important point to the SEAs. There now exists for the first time a single, comprehensive set of requirements and standards for the content of SEA applications. This notion cannot be communicated, however, without -- at a minimum -- presenting all of the requirements and standards in a single list. Moreover, one must question whether or not OE intends to use these requirements and standards in its review of SEA applications if it has not even listed them. More serious than OE's failure to list these requirements is the possibility that OE may not intend to use them. This strikes at the heart of the issue of whether or not OE understands the new administrative role that Congress has established for the agency.

It is important to note that OE did provide early guidance to SEAs (in the April program directive noted above) on information to be included in the newly-required MEP. Since MEPs had to be approved by OE before grants could go out on July 1, 1979, it was necessary for SEAs to receive this guidance from OE on a faster schedule than the NPRM (which was not published until June 29th). The guidance in the April directive did very little more than repeat the statutory requirements contained in Section 171(a), however. For example--

- No guidance was given to SEAs on selection of "matters to be reviewed during such visits" (Section 171(a)(2)), except that the OE directive said, in effect, that everything pertaining to Title I would be reviewed in SEA visits to LEAs.
- No guidance was given to SEAs on "verifying information provided by LEAs and State agencies" (Section 171(a)(3)), even though that requirement clearly called for examples of how to "use...other information available to the State to cross-check that information."
- No reference was made by OE regarding required SEA "procedures for the recovery of any expenditure determined not to be allowable under this title" (Section 171(a)(4)).

SEA monitoring requirements in the January 1980 regulations are no more helpful than was the earlier directive. The statutory rules for MEPs are simply repeated verbatim with no elaboration on the three points noted above.

OE did, however, develop check lists for internal use in reviewing SEA applications and MEPs. A review of one set of check lists (entitled "Instructions for Program Operations Branch Reviewers of State Applications and Monitoring Enforcement Plans, "[sic] dated June 8, 1979) showed that the program office had, in fact, gone to considerable effort to identify the exact items that SEAs should be investigating in their monitoring of LEA projects. These check lists made it possible for OE personnel to review the SEA monitoring instruments (required to be submitted with the MEP) in a careful, systematic way and then to request additional information from SEAs as needed to make the plans complete. For example, OE's "monitoring instrument check list" includes eighteen areas which should be included in SEA monitoring instruments (e.g., information on the supplementary nature of Title I funds, selection of target schools, and written complaint procedures) and for each area the check list cites pertinent legal requirements. A comparable check list was provided for SEA complaint resolution procedures. Using these check lists, it was possible for OE project officers to determine that many of the MEPs were incomplete and then to request supplementary information from the States as needed. However, the process would surely have worked better if OE had shared the guidance in their check lists with SEAs from the beginning, before SEA preparation of their applications and MEPs.

In addition to reviewing plans for State-level monitoring of LEAs, OE has in the last year and a half also attempted to improve its own on-site monitoring of SEAs and selected LEAs within each State. The OE monitoring is intended, in part at least, to check on (1) the accuracy and completeness of information contained in each SEA's Title I application and (2) the SEA's compliance with the assurances in its application. OE's FY 1980 monitoring procedures (entitled "Review Guide for SEAs, Title I, ESEA, FY 1980," "Review Guide for LEA Headquarters," "Review Guide for School Visitation," "Review Guide for State Applicant Agency Visitation") are voluminous in the detail which they require OE site reviewers to acquire and write down. Considered as a complete package, the monitoring guide probably covers the information and assurances required in the 1978 statute as well as other information not required by the statute. The portion of the SEA guide relating to SEA organization and staffing, for example, requires the OE reviewer to provide written answers to thirteen broadly stated questions, such as "Describe the efforts to coordinate State, Title I, and other Federal programs." The questions are useful ones, but it is hard to believe that a one or two person team spending an average of four days in each State (regardless of the State's size) could reasonably be expected to acquire all of the requested information about the SEA, other relevant State agencies, and one or two LEAs. When asked how OE reviewers were able to cope with this level of detail across such a wide range of areas, officials of the Title I program office said they had to work very hard on the SEA monitoring visits. In addition, they stated that priorities had been established by senior Title I personnel. No guidance was given to reviewers as to what categories of information were more important than others -- either with regard to specific SEAs or as a matter of general policy across all SEAs.

Interviews with Title I personnel revealed one bizarre directive that has been communicated orally within the office. OE reviewers conducting monitoring visits to SEAs are not to inquire about State actions in implementing MEPs. The stated reason for this exclusion is that States need a year to begin implementation of the MEPs before OE begins to oversee their progress. This explanation provokes more questions than it answers, since SEAs regularly monitored their LEA grantees even before the MEP requirement was imposed (Goettel et al 1977, page 78). According to a Title I official, the actual reason OE was not going to monitor MEP implementation was because SEA officials had objected to a particular provision of the new regulations (pertaining to the independence of auditors assigned to review State Title I operations), and OE did not want to provoke further SEA resentment. Whatever the reason, it would seem negligent in the extreme for OE not to look at MEP implementation during the annual SEA on-site visits. By offering criticisms and assistance at this early stage, OE would be able to help SEAs get their new monitoring responsibilities off to a better start than would otherwise be possible.

As noted in the discussion of OE's efforts to develop a policy manual, the Title I program office has not yet responded to the directive in the House report that OE develop "model [LEA] application approval procedures" for the States and a "model application form" (Committee on Education and Labor 1978, page 43).

Audit activities

Neither the June NPRM nor the January draft regulations for Title I set out the Federal audit resolution procedures required in Section 185(b) of the Act. Mechanisms for coordination among Federal auditors and the Title I program office are also not addressed in the regulations (or the policy manual, as noted above), despite an explicit request for such mechanisms and for other audit-related provisions noted in the House report (Committee on Education and Labor 1978, page 54) and listed in the preceding section of this report. No regulations have been written to implement the 75% pay-back provision in Section 1232 of the 1978 Amendments (described in Section II of this report). Some officials in the Title I program office and the office of the Education Appeal Board state that they believe regulations are needed to implement that provision. Others, however, believe that regulations are not needed.

Although no Title I procedures for audit resolution have been included in the regulations, OE has developed a set of agency-wide procedures that cover a number of points listed in the Title I statute and in the House report ("Interim OE Audit Resolution Policies and Procedures," issued on January 11, 1980, to OE offices by Alfred Dubbe, Chief of OE Audit Liaison and Coordination). The interim policies and procedures describe, for example, procedures for the tracking of unresolved audits, audit resolution procedures, categories of audits to receive priority attention, and procedures for follow-up of resolved audits. Although this document does not address all the matters in the House report (e.g., "common audit standards agreed upon by OE, the Office of the Inspector General, and HEW's Office of General Counsel") it does provide a better framework for audit resolution than has existed previously. Despite the fact that it is designed to apply to all OE programs, none of its elements appear seriously inconsistent with Title I requirements. At present, no plans exist to disseminate these policies and procedures outside OE, nor are there activities underway to adapt this OE-wide document to the specific needs of Title I.

The proposed regulations do set out "minimum standards" for SEA audit resolution, as required by Section 170(b) of the Act. They also set out procedures for State auditing of LEAs, which are consistent with the directives in the House report (Committee on Education and Labor 1978, page 47) specifying matters to be considered in the compliance portion of such audits.

OE has also moved to clear up a backlog of previously unresolved Title I audits. The establishment of the new Education Appeal Board drew attention to the large number of outstanding Title I audits, and in late 1978 OE transferred to the HEW General Counsel the authority to fill several empty staff positions with attorneys who would work on reducing the audit backlog. The General Counsel's office fulfilled their side of this bargain, and the unresolved audits are being moved off the books. Due to inadequate documentation in these old audits, OE has not in most cases been able to issue Final Determination letters for the full recommended monetary exceptions, but funds are being recouped even if in small amounts.

For the audits completed in the last year, OE has moved much more quickly than in the past to issue Final Determination letters and has supported HEW Audit Agency recommendations much more fully than previously.[18/] Collection of significant amounts of misused Title I funds has been required in Final Determination letters to California ($29 million) and the District of Columbia (over $1 million).

The delay currently impeding audit efforts is caused by the backlog of resolved audits which have been appealed to the Education Appeal Board. Delays in the consideration of appeals are averaging about two years due to inadequate numbers of Appeal Board members available to serve on the three-person panels required to hear each appeal. According to one Title I official, a list of proposed members has been awaiting approval by the HEW Secretary for over seven months. Even though all other mechanisms for operation are in place, the Board is unable to function properly without sufficient Board members. And since the provision establishing the new OE-wide enforcement procedures under Section 1232 of the 1978 Education Amendments permits the LEA or SEA to delay any required repayment until after an appeal is decided, OE is unable to assure prompt recoupment of funds until the Board begins acting on appeals in a timely manner.

The future success of Title I audit activities will depend largely on the structure and priorities of the new Education Department's Office of the Inspector General. At present the HEW Inspector General continues to be responsible for Title I audits at the Federal level. That office's FY 1980 work plan (entitled "Audit Agency Work Plan -- FY 1980," November 6, 1979) projects, however, a 14% reduction in staff time devoted to Title I audits in FY 1980 compared to FY 1979. The plan states that Title I auditing priorities in FY 1980 will be (1) compliance with maintenance of effort requirements, (2) implementation of requirements related to MEPs, and (3) implementation of the Migrant Student Record Transfer System. Despite these plans, however, OE officials say that the HEW Inspector General will conduct no FY 1980 audits of Title I since that auditing authority will soon be taken over by the Department of Education's Inspector General.

In retrospect it is clear that Title I has been hurt over the years by the lack of cooperation between the Inspector General and the Title I program office. Closer coordination would have yielded benefits in the identification (1) Title I requirements to be highlighted in Federal audits and (2) specific State and local agencies to be audited. Additionally, the two offices should have been able to work together more closely in the development of standards used to measure compliance in Federal audits. Much greater attention should also have been given to verifying the State and local implementation of corrective actions called for in Federal audits. OE officials admitted that they had not made adequate progress in building this step into their State program review procedures, with the result that OE cannot be sure that faulty policies and practices have been corrected once they are discovered through the audit process.

A new auditing requirement, which will affect Title I and other Federal programs, is contained in the October 22, 1979, revision of Circular 102, "Uniform Administrative Requirements for Grants-in-Aid to States and Local Governments Issued by the Office of Management and Budget." This revision requires that States and local governments receiving Federal grants be audited by independent auditors at least once every two years. The audits are to cover financial operations as well as legal compliance with certain provisions of Federal law and regulations. As yet, no serious consideration has been given in OE to how this requirement will affect LEAs and SEAs, virtually all of whom are recipients of Title I grant funds. Title I officials interviewed for this report were not aware that these new auditing requirements even exist. The new requirements will likely have a profound effect on Title I audit activities, however, since they are intended, in part, to "insure that audits are made on an organization-wide basis, rather than a grant-by-grant basis."

Complaint resolution

The January draft regulations set out the required standards and procedures for complaint resolution at Federal, State, and local levels. According to one State Title I director, the most valuable provision in this regard is the definition of what constitutes a complaint (in Section 116.46(b) of the January regulations). Though not specifically requested to regulate on this point, OE's definition is consistent with the statute and may simplify the handling of complaints. Lawyers outside the government have pointed out, however, that the new definition may seriously hamper the filing of complaints by Title I parents, many of whom may be unfamiliar with the technical language used in the regulations. It was further noted that many Title I parents would be unable to file a complaint that met the requirements in the regulations without the help of a lawyer or other knowledgeable advisors. The text of the definition, from the January regulations, states:

> Definition of Complaint
>
> An applicant or operating agency shall consider a signed statement as a complaint if it includes with respect to the agency's Title I project--
>
> (1) Information that if true, indicates in sufficient detail that a specific requirement has been violated;
>
> (2) An allegation that a specific requirement of Title I, GEPA, or EDGAR has been violated.

One OE official reported that only one complaint has been handled by OE under the new law. It is an appeal from a State decision on a complaint originally filed with that State. A staff member at the Lawyers' Committee for Civil Rights Under Law reports, however, that that organization through the Federal Education Project has filed no less than five complaints with OE under the new statutory authority. Concern has also been expressed regarding the ability of OE to resolve complaints in a timely manner, especially where the LEA and SEA have also failed to resolve complaints properly (Federal Education Project undated).

Enforcement and sanctions

As of now, OE has not used its new enforcement authority permitting the agency to (1) withhold a portion of the Title I funds of a non-compliant SEA and (2) enter into compliance agreements with SEAs. OE has included a provision in the NPRM and the January regulations that deals with compliance agreements between SEAs and LEAs (or other operating agencies), but the provision erroneously adopts language from the statutory provision for Federal compliance agreements which permits SEAs, in effect, to submit a six-month plan for compliance rather than coming into compliance with Title I requirements more quickly. OE's understanding that SEA/LEA compliance agreements could provide for less than very rapid compliance would appear to be a seriously inaccurate interpretation of the law.

OE's draft regulations do not include any discussion of Federal compliance agreements, nor has OE regulated on several points for which the House and Senate reports requested OE regulatory interpretation, e.g., the practical meaning of "substantial compliance" as used in Section 186 of the Act. The regulations also do not comply with directives in the House report requiring "a section describing enforcement options and sanctions (including)...disapproval of applications..., the compliance aspect of monitoring and auditing," and the like (Committee on Education and Labor 1978, page 46).

Evaluation

The statutory authority for Title I evaluations was not materially changed in the 1978 reauthorization. The 1974 statute had requested OE to develop models for the States to use in guiding local evaluation activities, and since 1974 OE has devoted considerable effort to the development of those models. The models and accompanying guidance were published in the Federal Register as an NPRM for Title I evaluation activities in February 1979. They were published in final form in October 1979 and will be republished with the other final regulations for Title I later this year.

As noted in the preceding section, the House and Sentate reports had asked OE to review the wisdom and utility of the evaluation models and to determine whether or not they can be effective in assisting local Title I planning and in providing aggregated data for national assessment purposes. The OE evaluation office reports that as of now no such broad review of the models has occurred but that OE plans to convene a panel of evaluation experts in the summer of 1980 to consider these issues. The panel will be composed of representatives from SEAs and LEAs as well as evaluation specialists from research institutions. On the basis of this review OE will consider whether or not to propose changes in the evaluation models.

A major issue which that panel must consider is the extent to which LEAs are using evaluation results in designing and revising their Title I projects. OE Title I officials and Title I State directors in interviews for this report stated that data from the evaluation models are not now being widely used in making local decisions. The Title I regional Technical Assistance Centers have been instructed by OE, however, that advising SEAs and LEAs on how to use data generated by the models for local planning purposes is to be their first priority during the coming year. Since OE is currently spending $11 million a year to support technical assistance for Title I evaluations, it seems clear that the resources are available to improve local utilization of evaluation efforts, assuming that the models are appropriate for local planning needs.

Another problem raised in the House and Senate reports was that OE's national evaluation studies are not scheduled to provide information to Congress when it is needed, i.e., in those years when Title I legislation is being considered. Results either come in too early, according to committee reports, and are out-dated when legislative deliberations begin, or the results come in after decisions have been made. OE has responded to that concern by preparing a multi-year plan for Title I studies entitled, "Report on Title I Research and Evaluation Plan," and circulated for internal review in January 1980. That plan is based on anticipated legislative needs for the next Title I reauthorization and premises its scheduling of studies on the reauthorization calendar. As a result of this plan, several proposed Title I studies have been dropped and others have been added. In addition, some adjustments have been made in the timing of current studies to accommodate the expected schedule for the next Title I reauthorization. This plan has not, however, been shared with the Congressional committees or made available to the public.

Periodic reports to Congress

As noted previously, the requirement for a Title I evaluation report is not new with the 1978 statute. OE's submission of that report did not meet the required February 1, 1980, due date but will not be more than several months late. It will contain information from State evaluation reports and from various national Title I studies currently underway. The study will not present any dramatically new data or conclusions.

Until the first week of February 1980, OE had been planning not to submit the required 1980 enforcement report to Congress but rather to delay reporting on the Section 188 mandates until 1982. As a result of inquiries made in the preparation of this report, however, the Title I office is now collecting necessary data for the 1980 enforcement report and will be issuing it later in the year.

Oversight by parents and the public

The January regulations for Title I are considerably more comprehensive in their coverage of PAC procedures and responsibilities than was the NPRM. Moreover, the section of the regulations dealing with monitoring, complaint resolution, school-wide planning, and the ranking of Title I eligible schools all make the statutorily-required references to PAC responsibilities and access to information.

With regard to the 1978 requirements for PAC training, OE will conduct five regional workshops in the spring of 1980 which will provide guidance to SEAs on how to work with LEAs and PACs in improving the quality of training activities available to PAC members. At the workshops OE plans to distribute copies of a handbook entitled Working with Schools: A Parent's Handbook, developed by OE and intended to provide ideas to parents on how to increase their involvement in their children's schooling.

OE and NIE have not launched new studies in response to the mandate for a study of Title I parent involvement and training. Agency officials state that they are making certain changes in several current studies in order to fulfill the mandate.[19/] No earmarked funds have been requested or appropriated pursuant to the special authorization in Section 125(g).

During the past two years OE has begun to provide more leadership regarding SEAs' and LEAs' compliance with Title I parent involvement requirements. Much of this leadership has been exerted through informal mechanisms described earlier. However, compliance with parent involvement requirements is unsatisfactory in many LEAs throughout the nation, according to informed observers. Although OE attempts to address this problem in its on-site reviews of SEAs and selected LEAs, it is compromised in its efforts to do so by limitations of staff and time. As in enforcing other Title I mandates, OE's effectiveness in assuring compliance with parent involvement requirements is influenced by resources available to the agency.

Aside from limitations on monitoring, OE has responded in a generally positive manner to the priorities in the new statute related to parent involvement. Though not representing a Federal action, one encouraging sign (reported by several Title I state directors) is the recent steps taken by many Title I SEA units to hire full-time PAC coordinators within their respective States. Depending on the expertise of these new coordinators and the support and authority they receive from OE and the SEAs, they may be able to improve opportunities for parent involvement and PAC effectiveness in their States. At the Federal level another positive note is a recent decision by the Title I program office to submit all OE monitoring reports with references to specific LEAs to the district-wide PACs in the LEAs under review as well as to the LEA itself. This action is not explicitly required in the statute but is consistent with the general legislative priority on PAC access to information.

SUMMARY

OE's record in implementing Federal administrative provisions of Title I reflects both successes and failures. While the agency has taken steps to implement most major administrative aspects of the new law, there is no indication in written or oral statements from the agency that OE decision-makers grasp the essential message conveyed by Congress in the Title I reauthorization. That is that OE is to establish an interrelated Federal/State/local administrative system in which each part of the structure has major, explicitly-stated responsibilities designed to interlock and create intentional redundancy of function. The purpose of this complex system is to use many mechanisms to guarantee that supplementary educational services paid for by Title I are received by the disadvantaged children whom the program is designed to assist. No single administrative function, such as monitoring or auditing or complaint handling, has any ultimate purpose _except_ as a component of this system. Congress set out the building blocks for this structure. OE has examined them and taken steps to put them in place. The structure cannot function, however, until OE fully comprehends the administrative system needed to make the structure work.

NOTES

[16] This view was put forth by several persons knowledgeable about the Title I office, including key Congressional staff members and senior career officials in OE.

[17] This practice was described by Congressional staff and OE senior officials.

[18] For the last year and a half, no Title I audit has been on the HEW Inspector General's "delinquent list," i.e., audits completed by the Audit Agency with monetary exceptions over $250,000 but not issued by the appropriate agency within six months of completion by auditors.

[19] The major study which is cited by OE and NIE in this regard is OE's evaluation of parent involvement in four Federal programs -- Title I, Follow Through, Bilingual Education Act, and Emergency School Aid Act. This study does not include a focus on alternative methods of PAC training, which is a highlighted area in the statutory mandate, nor does it look at achievement effects of parent involvement, which is also requested by the statute.

Section IV. FINDINGS AND RECOMMENDATIONS ON IMPROVING FEDERAL ADMINISTRATION OF TITLE I

This report has examined (1) the changes which Congress directed OE to implement in the Federal administration of the Title I program and (2) the steps taken by OE to respond to those directives for change. The first part of this section lists the major findings of the study. The second part presents the recommendations which the National Advisory Council on the Education of Disadvantaged Children wishes to bring to the attention of the Secretary of Education.

Findings of the study

The findings presented below are based on the research and analysis described in the preceding sections of the report. In examining issues in Title I Federal administration, two organizational problems emerged which characterized Federal performance across the range of substantive issues covered in this report. Findings related to these organizational problems are presented first since their resolution is judged to be an essential first step in improving Federal administrative performance under Title I.

1. The Title I program office has not had adequate access to senior decision-makers to permit careful consideration of program policies. The placement of Title I in a very large bureau has required competition for the attention of the Deputy Commissioner. Despite its importance in numbers of children served and in budget authority, Title I is only one program in a bureau that also includes Impact Aid, Emergency School Aid, Follow Through, and other elementary and secondary programs. The Deputy Commissioner, who can only spend a fraction of his time on Title I, nevertheless must make decisions on most policy and administrative questions handed to him by the Title I program office. Very few Title I issues are even brought to the attention of the Commissioner or the HEW Secretary for final

decision. As a result of this organizational distance, senior decision-makers in closest touch with the President and the Congress have not been sufficiently informed about Title I issues and policy to provide operational guidance to the program.

2. The Title I program office has had insufficient administrative resources to carry out its statutory responsibilities. This problem has been caused by (1) the poor bargaining position of the Title I program office in the annual OE negotiations for Salaries and Expenses funding and (2) the perception of some senior OE managers that Title I is primarily a check-writing program. The inadequacy of Title I's administrative resources is seen by comparing the numbers of staff positions allocated to Title I with the numbers of staff positions given to other large State formula grant programs, such as vocational State grants and handicapped State grants (see Table 2). Insufficient administrative resources have resulted in (1) inadequate staff and travel for monitoring State Title I activities and (2) inadequate attention to matters such as audit resolution, as described in the eighth finding below.

3. The Title program office has not had sufficient access to the offices in OE and HEW that regularly communicate with the Congress. This organizational remoteness has reduced opportunities for the program office to exchange information and ideas with the appropriate Congressional committees. As an example of the administrative problems caused by this situation, prior to inquiries prompted by this report, no steps had been taken by senior OE managers to see that the required Title I enforcement report was prepared and submitted to Congress by the due date of February 1, 1980.

4. The Notice of Proposed Rulemaking published in June 1979 was an inadequate response to the 1978 Congressional directive to make the Title I administrative framework more clear and comprehensive. Revised draft regulations

circulated in January 1980 correct some of the early deficiencies; however, at this writing, final usable regulations are still not complete. Congress intended that the Title I regulations set forth all requirements for the implementation of Title I activities and in a number of instances specified clarifying details to statutory provisions which were to be included in the regulations. The Title I draft regulations published as a Notice of Proposed Rulemaking in June 1979 fell seriously short of the goal set by Congress regarding completeness. This deficiency was the result of over-vigorous adherence to new HEW policy to make regulations as brief as possible and not to repeat or paraphrase in regulations those requirements that were already set out in the authorizing statute. Although new draft regulations circulated by OE in January 1980 eliminated some of the deficiencies and omissions of the June regulations, the later OE regulations still do not provide examples, definitions, or clarifications on many of the specific points on which the 1978 Title I statute mandated that regulations be prepared. Despite eighteen months of preparation time, final Title I regulations are still not available for review, thus precluding any objective assessment of OE's performance in this regard.

5. OE will publish the Title I policy manual mandated by the 1978 law, but development of the manual is behind schedule due to delays in the issuance of final regulations. In strictly legal terms, the policy manual will not be issued later than mandated in the law (i.e., within six months after publication of final Title I regulations). However, since the policy manual must reflect the content of the final regulations and since the final regulations are not likely to be published until the fall of 1980, the policy manual will probably be issued no sooner than two and a half years after enactment of the 1978 law. This delay represents a serious failure to respond to Congressional intent that

Title I legal guidance as well as instructional and administrative alternatives be placed in the hands of Title I personnel at an early date.

6. OE's rules and procedures for review of State applications and monitoring and enforcement plans (MEPs) do not ensure that States will adequately carry out their duties with regard to review of LEA applications and monitoring of LEA projects. The purpose of OE review of SEA applications and MEPs is to make certain that SEAs are fully knowledgeable about all pertinent Title I rules applying to SEAs and LEAs and to make certain also that SEAs are implementing Title I activities in their respective States in accordance with those rules. As described above, however, OE has not yet produced Title I regulations that include all of the Title I rules. Moreover, in early guidance to SEAs and in draft regulations, no comprehensive description of information to be included in the MEPs has been compiled by OE for the agency's own internal use. Parts of the Title I application to be submitted to OE by SEAs simply require that each State make a blanket assurance of compliance with all pertinent Federal requirements. By not providing more specific guidance to SEAs and by not requiring SEA responses that are more specific in content, OE cannot confidently determine whether SEAs know what actions are required of them and whether they intend to comply with those requirements that do apply. In this regard it should also be noted that OE has not developed model application forms and monitoring instruments for use by SEAs and LEAs, as required in the Act.

7. OE has made improvements in its own procedures for monitoring the States, but it has not determined monitoring priorities nor identified which aspects of State Title I administration should be examined most closely in visits to the States. The purpose of OE's monitoring of State Title I activities is to determine whether the States are complying with requirements of the Title I statute and regulations. A secondary purpose is for OE to offer assistance to

the States as needed to improve Title I compliance and to facilitate the delivery of better Title I services. Because of staff and travel restrictions, OE is not able to monitor each State in a full and comprehensive manner. Given these limitations, the agency should establish precise priorities regarding which States to examine most closely (e.g., States with large programs or States with records of poor Title I administration) and which program components to review most carefully in each State (e.g., requirements for which a given State indicates a record of problems or requirements which are particularly complex and difficult such as no-supplanting or local maintenance of effort). OE has not established such priorities. Instead, the Title I program office devotes the same limited number of man-hours to monitoring each State, and site reviewers attempt to look at all program components in each State, without setting nationwide or State-by-State priorities.

8. OE has substantially improved its efforts to resolve disputed audit findings, but it has not yet made changes in its audit procedures required by the 1978 law. Despite the commitment of time and personnel to speed the processing and resolution of Title I audits, OE at this writing has not accomplished the following steps required by the 1978 law and/or requested in the 1978 House and Senate reports: (1) development and publication of Federal audit resolution procedures; (2) development of common audit standards agreed upon by OE, the Office of the General Counsel, and the Office of the Inspector General; (3) development of standards for adequate documentation of audit findings; (4) development of methods for following up on audits to make certain that adequate corrective actions have been taken; and (5) appointment of a full complement of members to the Education Appeal Board to permit the expeditious resolution of State and local appeals to Federal audit findings. In addition, OE has taken no steps to implement new government-wide rules on auditing of State and local

governments receiving Federal grants. These administrative deficiencies undermine the progress that OE has made in the processing and resolution of audits. Although Congress expressed serious concern in 1978 about Title I audit-related activities, few steps have been taken to alleviate those concerns.

9. OE's new definition of a Title I complaint contained in the draft regulations may limit the filing of complaints by parents of students eligible for Title I services. Although the new definition may make the job of Title I program officers simpler (by making it easier to determine whether a complaint has been properly stated), the technical definition of a complaint as proposed by OE in draft regulations may make it very difficult for an individual to prepare a written complaint, especially if he or she is not familiar with legal terminology. Additionally, draft regulations do not facilitate prompt resolution of complaints through the three-step (Federal/State/local) system.

10. OE's performance on enforcement-related matters cannot be assessed because the agency has not yet used its new enforcement authority, nor has it issued regulations covering several enforcement-related matters contained in the law. OE has not used its new authority to (1) institute partial withholding of Title I funds from SEAs not in full compliance with Title I and (2) enter into "compliance agreements" with an SEA which has developed an acceptable plan for eliminating specified illegal practices. The purpose of new statutory provisions on enforcement and sanctions is to permit OE to apply penalties for non-compliance that do not result in the complete removal of Title I funds for services to disadvantaged children. OE has not yet responded to Congressional mandates to regulate on two specific matters critical to implementation of the new enforcement tools: (1) the meaning of "substantial compliance" as used in determining whether to commence the withholding of Title I funds and (2) a description of enforcement alternatives available to SEAs, including the

disapproval of LEA applications and the like. In addition, the draft OE regulations do not specify the content of compliance agreements between OE and an SEA. Until regulations are issued covering these matters, OE will not have responded fully to Congressional directives in this area.

11. OE has not implemented Congressional directives to (1) enlarge State and local roles in designing and conducting evaluations at State and local levels and (2) conform the scheduling of Title I studies to the legislative calendar. Congress made few changes in the evaluation requirements in Title I except for amendments aimed at ensuring greater State and local participation in designing and implementing evaluations at national, State, and local levels. The intent of these amendments was to increase the usefulness of evaluations for local decisions about improving Title I services to disadvantaged children. In addition, Congress wanted the findings of national Title I to contain information relevant to legislative needs and to be available on a schedule consistent with the legislative calendar. Although OE evaluation directors have reported that they plan to review the Title I models to consider their appropriateness for local data needs, no concrete steps have been taken to initiate that review. With regard to conforming Title I evaluation plans to legislative needs, a multi-year plan has been prepared for that purpose. Because the plan has not been released for review outside OE, however, Congressional committee members and the public have no way of determining whether or not it is consistent with current plans for Title I reauthorization.

12. OE has not submitted to Congress the Title I evaluation and enforcement reports due February 1, 1980. Work is now underway on both reports, and OE representatives state that they expect to issue the reports later in the year.

13. NIE and OE have not yet adequately responded to the Congressional mandate for a study of Title I parent involvement. The mandate to NIE has not been implemented, according to OE and NIE officials, because OE is conducting a study addressing many of the concerns expressed in the statute. Despite this explanation, however, it is not clear that the OE study will in fact yield the information requested by Congress. In other matters pertaining to parent involvement, OE has implemented Congressional directives. New regulatory provisions provide increased opportunities for training of PAC members and for PAC review of certain local decisions, such as (1) the use of achievement-based procedures for the selection of schools to be designated as Title I schools and (2) the delivery of Title I services to all students in certain high-poverty Title I schools. The draft regulations also implement the legislative mandate that PACs be given certain types of Title I information required by the law, including reports on the resolution of complaints pertaining to their LEA and reports on the results of SEA monitoring visits to their LEA. OE appears not to be adequately monitoring State administration of parent involvement requirements because of overall limitations on resources available for OE on-site monitoring of SEAs.

Recommendations to the Secretary

The implementation of the Department of Education offers an important opportunity to improve the Federal administration of the major national program intended to benefit disadvantaged children in elementary and secondary schools. The National Advisory Council on the Education of Disadvantaged Children believes that the Secretary must assume a strong leadership role in assuring the effective administration of Title I program, giving special attention to the Department's prompt implementation of the legislative mandates for Title I in the Education Amendments of 1978.

This report has presented a mixed picture of OE's response to the Title I mandates in the Education Amendments of 1978. In those cases in which OE has responded slowly, ineffectively, or not at all, the responsibility cannot be assigned solely to the Title I program staff. These problems seem to stem instead from attitudes among HEW executives that Title I did not warrant their active leadership and oversight. While the Federal administration of Title I has significantly improved during the course of the program's history, many of these improvements have been stimulated by the leadership of Congress and agencies and organizations external to OE. It is clear that, if Title I is to be administered in a manner consistent with the intent of Congress and with the needs of the program's intended beneficiaries, the Title I staff must have the leadership and support of the Secretary and her deputies. The absence of such leadership will not only compromise the effectiveness of Title I but will invite criticism of the Department's administration of the program, thus possibly jeopardizing support for Title I.

The National Advisory Council on the Education of Disadvantaged Children therefore recommends that the Secretary of Education address thirteen areas in which administrative improvements can be achieved immediately.

1. The Director of Title I must report directly to the Assistant Secretary for Elementary and Secondary Education.

The Title I program is so much the heart of the Federal effort in elementary and secondary education that it must not continue to be buried layers below the cabinet officer of its Department. Such a structure prevents important issues from being raised and resolved at a senior level. And it prevents the Title I program chief from having frequent, informal (as well as formal) contact with the individual in closest touch with the Congress and the President on education matters. Given the strong commitment of the President and the Secretary to Federal assistance for the education of disadvantaged children, this contact is essential.

Title I should be separated from the Secretary by no more than one intervening layer, i.e., the Assistant Secretary for Elementary and Secondary Education. Although it is important for the major oversight role to be carried out by the Secretary, it may also be desirable for the Secretary to designate the Assistant Secretary for Elementary and Secondary Education as the Department's day-to-day decision-maker and spokesman on policies affecting Title I, coordination between Title I and other key offices, and regular communications with the Congress and groups such as the National Advisory Council on the Education of Disadvantaged Children.

2. The organization and staffing of the Department of Education must reflect the high priority which Congress attaches to the effective administration of Title I. Thus, sufficient personnel and Departmental funds must be provided to improve the capacity of the Title I program office to monitor compliance and administer program operations effectively. As a first step toward improving Title I's staffing patterns, the Secretary should undertake a systematic and careful staffing analysis.

The importance Congress places on Title I must be reflected in staffing patterns Department-wide. As a first step in determining Title I staffing needs, the Secretary should designate a staffing review team to assess current Title I staffing needs by comparing program administrative responsibilities and Title I staff resources. This analysis should include the following four components: (1) an assessment of the functions which the Title I office must perform in order to administer the program in conformance with the law and with acknowledged principles of sound management, (2) identification of staff capabilities required to implement the identified functions, (3) evaluation of the extent to which current staff in the Title I program office possess needed skills and is of sufficient number to perform these functions, and (4) identification of strategies to address staffing deficiencies, including retraining of current staff, reassignment as needed and, finally, increases in the number of staff assigned to Title I. Such analysis should be conducted for the Title I program office, the staff of the Office of the Inspector General assigned to audit Title I State and local projects and to oversee implementation of new government-wide requirements for auditing of State and local projects, and the staff of the Office of the General Counsel responsible for resolution of Title I audits and other Title I legal matters.

3. The Secretary must establish more effective lines of communication between the Title I program office and both the Congress and the general public.

The purpose of such communication is to promote the Congressional and public oversight of Title I required in the 1978 statute. As a practical matter, the Secretary can expect program benefits from the improved understanding of Congressional and public concerns that would result from increased communication among these parties.

Related to the need for improved communication with Congress and the public is the need to raise key upcoming Title I issues for the Secretary's consideration in advance of likely Congressional consideration. Better planning and foresight with regard to Federal administrative change could have prevented some of the misinterpretations and mistakes that have occurred in the past year. Issues likely to come up for legislative consideration in the next reauthorization should be anticipated and considered as quickly as possible. Such issues might include the following:

- How should Department of Education programs (including but not limited to Title I) treat children needing more than one kind of special service (e.g., compensatory education, bilingual education, education to deal with handicapping condition, assistance related to desegregation)?

- How should Title I programs at the elementary level link with special services (e.g., vocational training and compensatory education) for disadvantaged children at the upper grades? How should Title I be linked to implementation of youth employment efforts, when enacted?
- Should individualized education plans be required for students receiving Title I services?

In considering these and other issues, the Secretary should draw on experts outside the Federal Government as well as those within the bureaucracy. As unwieldy as it may sometimes seem, such outside consultation is essential for learning how these issues affect the individuals who cope with them every day in schools and elsewhere. The Secretary should seek such consultation on a regular basis and should use it.

4. The Secretary must expedite the publication of final regulations creating a legal framework for Title I which clearly and comprehensively reflects all pertinent legislative requirements.

The regulations and policy manual should reflect the Congressional understanding of the proper role of Federal administration in the Title I program. That role is as a strong overseer of a complex and interrelated system designed to increase administrative accountability at all levels in order to improve educational services available to disadvantaged children. Because the Title I undertaking is so massive in terms of dollars, of participating students, and of administrative and instructional personnel, the Federal administrative role must be aggressive and forthright. The Federal office must set a clear and explicit framework for State and local action in order to permit LEAs to know exactly what is permitted under Title I and what is not, thus allowing the greatest possible latitude for local action. Only by knowing precisely what is required can State and local administrators have the confidence to design programs that meet local needs effectively while complying with Title I requirements.

Procedurally, this change would mean that the final Title I regulations would contain all of the administrative requirements set out in the statute as well as all of the required models, procedures, and criteria requested in both the statute and the Congressional reports. In particular, the new regulations should contain (1) a detailed description of procedures to be used in the conduct and resolution of audits carried out at the Federal level to review SEA and LEA operations, (2) a corrected description of the permissible content of compliance agreements entered into between an SEA and an LEA (making clear that compliance is required very quickly), (3) a description of the required content of a compliance agreement between an SEA and OE, and (4) the practical meaning of "substantial compliance" as used in reference to decisions on possible Federal withholding of Title I funds.

5. The Department must publish a Title I policy manual within six months of publication of final Title I regulations as required by statute.

The policy manual must include all of the information required in the law and Congressional reports, including acceptable legal models for Title I instructional designs which provide alternatives to current "pull-out" approaches to Title I instruction. The policy manual must also include model application and monitoring forms for use by LEAs and SEAs.

6. The Department must develop (and publish in the regulations) clear and comprehensive guidance to SEAs regarding (1) the content of SEA applications and monitoring and enforcement plans and (2) required procedures for SEA review of LEA applications and implementation of monitoring and enforcement plans.

This guidance must include a statement of the rules for which SEAs assure compliance in their Title I applications to OE. The guidance must also include more specific directions as to what information is required in the monitoring and enforcement plans.

7. The Department must establish priorities which guide Federal on-site monitoring of State Title I administration.

Since current restrictions on staff and travel are likely to continue for the immediate future, precise priorities must be established regarding the States to be monitored most carefully and the program components within States which will be examined in the greatest detail. As a general rule, OE site reviewers should examine most carefully those portions of an SEA's administrative operation which (1) have the greatest effect on the improved delivery of educational services to disadvantaged students and (2) have been shown to be problem areas in the past for a given SEA. Those SEAs with the largest Title I programs and those with the most serious administrative problems in the past should receive the greatest amount of attention in OE site visits. In addition, the Secretary should carefully oversee the quality and amount of follow-up support given by the Department to SEAs and LEAs in instances where the State or local agency has been shown, either through a Federal audit or a Title I program review, to be not in compliance with a Title I requirement. In such instances the Department should not only make certain that the SEA or LEA comes into compliance promptly but should monitor the agency on a frequent basis to make certain that past improper practices are not allowed to reoccur. Finally, by careful oversight of Title I administrative activities from the Secretary's level, it should be possible to determine how well the various support units (e.g., Inspector General, General Counsel, evaluation, and research) are working with the program office and to make selective improvements in those relationships as needed.

8. The Department must implement changes in audit procedures required by the 1978 law.

At a minimum this requirement means that the Department must (1) develop and publish Federal audit resolution standards; (2) reach agreement among the

Title I program office, the Office of the General Counsel, and the Office of the Inspector General on common audit standards; (3) develop standards for adequate documentation of audit findings; (4) develop methods for determining that needed corrective actions have been taken where needed; (5) appoint a full complement of members to the Education Appeal Board; and (6) implement new government-wide rules on auditing State and local agencies which receive Federal grants.

9. Final Title I regulations must include a clear and easily interpreted definition of a Title I complaint.

In addition, final regulations must highlight the interlocking process for resolving complaints through local, State, and Federal levels in an expeditious fashion.

10. The Department must use its new enforcement authority and must issue regulations covering enforcement-related matters contained in the law.

The Department has authority to (1) institute partial withholding of Title I funds from SEAs not in full compliance with Title I and (2) enter into "compliance agreements" with an SEA which has developed an acceptable plan for eliminating specified illegal practices. As Congress requested, the Department must issue regulations covering (1) the meaning of substantial compliance as used in determining whether to commence the withholding of Title I funds and (2) enforcement alternatives available to SEAs, including the disapproval of LEA applications and the like. Finally, regulations must be issued which prescribe the content of compliance agreements between OE and an SEA.

11. In order to improve the quality of information available for State and local decision-making, the Secretary must develop procedures which ensure greater State and local roles in designing and implementing evaluations at national, State and local levels. Additionally, national evaluations of Title I must be undertaken

on a schedule which meets Congressional needs for information helpful to the legislative process.

Steps must be taken to review the Title I evaluation models and their usefulness in fulfilling local data needs. OE's multi-year evaluation and research plan for Title I, prepared to conform Title I studies to legislative needs, must be shared with Congressional committees to ensure that it is consistent with current plans for Title I reauthorization.

12. At the earliest date possible, the Secretary must submit to Congress the Title I evaluation and enforcement reports due February 1, 1980.

13. The Secretary must take necessary actions to fulfill the Congressional mandate for a study of Title I parent involvement.

At this writing it is not clear that studies currently underway in OE and NIE will address all of the concerns regarding parent involvement which are specified in the mandate.

APPENDIX A

INTERVIEWS CONDUCTED FOR THIS STUDY

Considerable data for this study were collected through interviews with persons who have either played a direct role in the administration of Title I or observed Title I administration from a close vantage point in recent years. Interviews were conducted by the author of the report in meetings set up specifically to explore questions related to this project. Telephone interviews were conducted in a few instances where the interviewee was expected to provide information on a relatively narrow matter.

Interviews were semi-structured in format and were tailored to the professional responsibilities and expertise of the person being interviewed. For example, in the two interviews with the chairman of the Education Appeal Board, the questions asked by the author centered on Title I audit and audit appeal matters and on other enforcement issues.

Described below are the organizational affiliations of persons interviewed for this study:

- Title I program staff, including all senior managers in the Division of Education for the Disadvantaged and other Title I officials with responsibility for specific administrative tasks relevant to this study (e.g., evaluations and audits) — approximately 11.
- Other OE staff, including managers in offices that play key support roles to Title I (e.g., audits, evaluation, regulations, and budget) and senior administrative personnel who report directly to the OE Commissioner — 6.
- Senior staff of Congressional committees having responsibility for Title I — 2.
- State Title I directors — 5.

APPENDIX A (Continued)

- Representatives of public advocacy groups which monitor Title I administration — 5.
- Authors of research reports on Title I administration (not employed by the Federal Government) — 6.
- Staff of the National Institute for Education who have conducted earlier studies of Title I administration — 1.

APPENDIX B

TITLE I FUNDING TO STATES

FY 1979 Appropriation Serving Students in School Year 1979-80

States	Funds for State Administration	Total Funding
Alabama	$ 1,101,624	$ 74,543,253
Alaska	225,000	7,742,051
Arizona	516,378	34,941,633
Arkansas	709,902	48,036,745
California	4,433,399	299,993,371
Colorado	449,897	30,443,069
Connecticut	456,388	30,882,304
Delaware	225,000	10,231,926
Florida	1,665,281	112,684,114
Georgia	1,233,392	83,459,618
Hawaii	225,000	11,890,296
Idaho	225,000	9,981,512
Illinois	2,132,660	144,310,048
Indiana	615,767	41,666,884
Iowa	398,952	26,995,785
Kansas	340,085	23,012,446
Kentucky	918,677	62,163,832
Louisiana	1,331,931	90,127,435
Maine	225,000	13,743,167
Maryland	792,584	53,631,563
Massachusetts	1,036,828	70,158,771
Michigan	1,979,641	133,955,709
Minnesota	632,178	42,777,486
Mississippi	1,097,757	74,281,605
Missouri	796,744	53,913,054
Montana	225,000	10,797,979
Nebraska	246,591	16,685,985
Nevada	225,000	4,922,745
New Hampshire	225,000	5,662,733
New Jersey	1,230,765	83,281,820
New Mexico	384,860	26,042,296
New York	4,473,058	302,676,995
North Carolina	1,377,060	93,181,062
North Dakota	225,000	9,170,866
Ohio	1,425,775	96,477,532
Oklahoma	536,501	36,303,283
Oregon	487,521	32,988,926
Pennsylvania	2,114,715	143,095,778
Rhode Island	225,000	10,366,445
South Carolina	856,633	57,965,593
South Dakota	225,000	9,703,732

APPENDIX B (Continued)

State	Funds for State Administration	Total Funding
Tennessee	$ 1,020,093	$ 69,026,352
Texas	3,612,339	244,435,041
Utah	225,000	10,165,940
Vermont	225,000	6,789,642
Virginia	993,725	67,242,087
Washington	615,505	41,649,223
West Virginia	443,242	29,992,743
Wisconsin	734,597	49,707,786
Wyoming	225,000	5,152,130
District of Columbia	280,547	18,983,702
American Samoa	50,000	1,555,112
Guam	50,000	1,878,903
Puerto Rico	1,634,617	110,609,467
Trust Territory	50,000	4,714,753
Virgin Islands	50,000	3,443,796
Northern Marianas	50,000	686,102
Bureau of Indian Affairs		20,291,879
Evaluation and Studies		16,456,000
Undistributed		710,845
TOTAL	$48,508,209	$3,228,382,000

Source: OE Division of Education for the Disadvantaged.

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May 1, 1980

Mr. M. Hayes Mizell
Chairman
National Advisory Council on the
Education of Disadvantaged Children
425 Thirteenth St., N.W. #1012
Washington, D.C. 20004

Dear Mr. Mizell:

I wish to publicly disassociate myself from the NACEDC's report, "The Office of Education Administers a Law:Agency Response to Title I, ESEA Amendments of 1978". I do so for the reasons stated below.

I. The process employed by the NACEDC in approving the document as a Council statement.

A NACEDC committee and an NACEDC consultant have produced a very specific and, in some areas, a quite thorough analysis and set of recommendations dealing with the U.S. Office of Education's administration of ESEA Title I, subsequent to the Education Amendments of 1978. A brief review of the committee's and the consultant's efforts was shared with members of the full Council in their March 1980 meeting. Specific recommendations were not discussed. At this point in time, without an opportunity for discussion of the draft report by the full Council, members are requested to approve the report for printing and dissemination as a NACEDC document. Members are advised that this must be done in order to facilitate Departmental consideration of recommendations relating to the new Department of Education in a timely fashion.

Without a full Council discussion of the report, this Council member is not in a position to fully understand the implications of the quite specific recommendations of the committee and to endorse implementation of the recommendations.

II. The Report's failure to adequately address administrative issues related to the delivery of ESEA Title I services to eligible private school students.

A. On page 3, the "report considers only matters related to Title I aid to school districts". Private school students are supposed to be served in these programs. OE administrative responsibilities related to the delivery of Title I services to private school students by school districts are not discussed.

Archdioceses of Los Angeles and San Francisco
Dioceses of Fresno, Monterey, Oakland, Orange, Sacramento, San Diego, San Bernadino, Santa Rosa, and Stockton

B. On page 6, the report mentions interviews with "representatives of public advocacy groups". To the best of my knowledge, no interviews were conducted with private school representatives or the U.S. Office of Education's Office of Non-Public Education which was established by the Education Amendments of 1978.

C. Throughout the report, there is an assumption that more Department of Education personnel will guarantee better Title I programming. With respect to private school student services, it could be that quality of personnel and/or specificity of job descriptions might be more important than the enlarging of staff or the expansion of budgets.

D. On page 9, the report estimates that Title I programs serve 200,000 private school students. This figure is higher than figures of the new Department's Office of Non-Public Education. There is an admission that data on Title I expenditures for private school students have not been collected, yet the report does not suggest a recommendation that data collection be done.

E. On page 18, the report discusses information obtained from the NIE study of compensatory education. Repeated attempts by this Council member to obtain the NIE study of private school student participation in ESEA Title I have consistently failed. Council staff members have been unable to obtain NIE's Vitullo-Martin study since November of 1979.

F. On page 20, there is discussion of resources needed to facilitate monitoring of ESEA Title I projects. No mention is made of the urgent necessity to include an examination of private school student participation in the monitoring processes.

G. The report is quite sensitive to parent groups and appears to be supportive of the National Coalition of Title I parents. At the same time, it ignores the plight of private school students, an issue of considerable concern to Congress in the Education Amendments of 1978.

H. The report omits Congressional directives relating to the delivery of ESEA Title I services to private school students.

I. On pages 47, 79 and 80, the report discusses complaint resolutions. It fails to address the role of the Assistant Secretary, Office of Non-Public Education, in complaint procedures associated with ESEA Title I and private school students. No mention is made of the By-pass.

J. While page 50 discusses evaluations, no mention is made of the necessity of including private school student participation in the evaluation process.

K. On page 58, there is no mention of the Assistant Secretary, Office of Non-Public Education, who is charged by Congress with maximizing the participation of private school students in ESEA Title I.

L. On pages 69 through 74, dealing with OE review of applications and monitoring aid enforcement plans, no mention is made of private school students. Copies of the documents mentioned on page 72 have not been made available to all the Council.

M. On page 87, no mention is made of the relationship that should exist between the Title I program office and the Assistant Secretary, Office of Non-Public Education.

N. On page 96, there is no mention of the need for staffing for monitoring compliance with respect to private school students. This may be a function for the Office of Non-Public Education.

I have bean told that the printed report will contain a disclaimer that private school student matters are not addressed.

I think that this will be the first time in the history of NACEDC that such an commission has been made. Private school students are supposed to be the recipients of LEA Title I programs. A report dealing with OE's administration of such programs is incomplete without adequate treatment of Congressional concerns about equity for private school students.

I have been advised that my dissent to this report and the process utilized in its production "may not be in the best interests of my future". I don't know what that means. However, I am not afraid to object to a document, even as a minority, when such a document errs in addressing students whose needs are often overlooked in the administrative process.

Sincerely,

Joseph P McElligott

Joseph P. McElligott, Ed.D.
Director, Division of Education

JPM:gt